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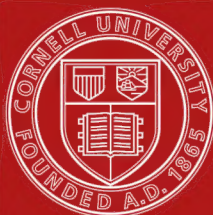
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A DIGEST
OF
STATUTES, ADMIRALTY RULES, AND
DECISIONS,
UPON THE
JURISDICTION, PLEADINGS, AND PRACTICE
OF THE
DISTRICT COURTS OF THE UNITED STATES.

BY
ERASTUS THATCHER,
AUTHOR OF DIGESTS UPON THE JURISDICTION AND PRACTICE OF THE SUPREME COURT,
AND OF THE CIRCUIT COURTS, OF THE UNITED STATES.

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P R E F A C E.

THIS work contains the several subdivisions of section 563 of the Revised Statutes of the United States, relating to the jurisdiction of the District Courts; also sections 564 to 571 inclusive. It contains the Rules of practice in admiralty and maritime jurisdiction prescribed by the Supreme Court of the United States, and the Rules of the District Court of the United States for the Southern District of New York for practice in admiralty, in instance and prize causes, and in common-law actions; also the Standing Interrogatories in prize cases. The latter Rules are inserted because they are often referred to in the Reports of the District Court for that district, and because those Reports constitute a large share of the entire list of District Court Reports. Also, it is believed that those Rules correspond, substantially, with the rules and modes of practice of the District Courts generally. The titles to all the Rules have been prepared by the compiler of this work.

The decisions upon the jurisdiction, pleadings, and practice of the District Courts have been collected from all the Reports of the Supreme Court, — 105 volumes; all Reports of the Circuit Courts for the nine circuits, — 103 volumes; and from all the Reports of District Courts, —

38 volumes: making a total number of 246 volumes of Reports cited. The points of the decisions have been arranged under the statutes, rules, and subjects to which they respectively relate.

Some cases upon jurisdiction in bankruptcy are cited, because questions with reference to such jurisdiction may arise collaterally in other matters. But decisions relating to practice in bankruptcy have been omitted, for the obvious reason that we have no national bankrupt law at the present time; and therefore a collection of such decisions would not now be useful to practitioners.

The decisions upon pleadings and practice in the Circuit Courts, in actions at common law and in criminal prosecutions, will usually be found applicable in like proceedings in the District Courts.

ERASTUS THATCHER.

WASHINGTON, D. C., Feb. 1, 1884.

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A DIGEST

OF

STATUTES, ADMIRALTY RULES, AND DECISIONS.

A DIGEST
OF
STATUTES, ADMIRALTY RULES, AND DECISIONS,
UPON THE
JURISDICTION, PLEADINGS, AND PRACTICE OF THE
DISTRICT COURTS OF THE UNITED STATES.

District Courts. — Jurisdiction.

*Jurisdiction. Crimes and Offenses.*¹

REVISED STATUTES.

SEC. 563. The District Courts shall have jurisdiction as follows: —

First. Of all crimes and offenses cognizable under the authority of the United States, committed within their respective districts, or upon the high seas, the punishment of which is not capital, except in the cases mentioned in section fifty-four hundred and twelve, Title CRIMES. [See ss. 4300-4305.]

24 Sept., 1789, c. 20, s. 9, v. 1, p. 76.

3 March, 1815, c. 101, s. 4, v. 3, p. 245.

23 Aug., 1842, c. 188, s. 3, v. 5, p. 517.

28 Feb., 1871, c. 100, s. 57, v. 16, p. 456.

3 March, 1875, c. 137, ss. 1, 9, v. 18, pp. 470, 473.

1. (Feb., 1807.) The clause of the eighth section of the Act of Congress “for the punishment of certain crimes against the United States,” Vol. 1, p. 103, which provides that “the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular State, shall be in the district where the offender is apprehended, or into which he may be first brought,” applies only to offenses committed on the high seas, or in some river, haven, basin, or bay, not within the jurisdiction

¹ See sec. 3 of the Act of March 1, 1875. Supplement to Rev. Stat., p. 148.

of a particular State, and not to the Territories of the United States, where regular courts are established, competent to try those offenses. *Ex parte Bollman*, 4 Cranch, 75.

2. The word "apprehended" in that clause of the act, does not imply a legal arrest, to the exclusion of a military arrest or seizure. *Ib.*

3. (Feb., 1812.) The courts of the United States have no common-law jurisdiction in cases of libel against the government of the United States. But they have the power to fine for contempts, to imprison for contumacy, and to enforce the observance of their orders, &c. *United States v. Hudson & Goodwin*, 7 Cranch, 32.

4. (March, 1816.) *Quære*, whether the courts of the United States have jurisdiction of offenses at common law, against the United States. [The case of *United States v. Hudson & Goodwin*, 7 Cranch, 32, affirmed by a divided court.]¹ *United States v. Coolidge*, 1 Wheat. 415.

5. (Feb., 1818.) Admitting that the third article of the Constitution of the United States, which declares that "the judicial power shall extend to all cases of admiralty and maritime jurisdiction," vests in the United States exclusive jurisdiction of all such cases, and that a murder committed in the waters of a State where the tide ebbs and flows, is a case of admiralty and maritime jurisdiction, Congress has not, in the eighth section of the act of 1790, ch. 9, "for the punishment of certain offenses against the United States," so exercised this power as to confer on the courts of the United States jurisdiction over such murder. *United States v. Bevens*, 3 Wheat. 336.

6. *Quære*, whether courts of common law have concurrent jurisdiction with the admiralty over murder committed in bays, &c., which are inclosed parts of the sea. *Ib.*

7. Congress having, in the eighth section of the act of 1790, ch. 9, provided for the punishment of murder, &c., committed "upon the high seas, or in any river, haven, basin, or bay, out of the jurisdiction of any particular State," it is not the offense committed, but the bay, &c., in which it is committed, that must be out of the jurisdiction of the State. *Ib.*

8. The grant to the United States in the Constitution of all cases of admiralty and maritime jurisdiction, does not extend to

¹ See 1 Gallison, 488.

a cession of the waters in which those cases may arise, or of general jurisdiction over the same. Congress may pass all laws which are necessary for giving the most complete effect to the exercise of the admiralty and maritime jurisdiction granted to the government of the Union. But the general jurisdiction over the place, subject to this grant, adheres to the territory as a portion of territory not yet given away; and the residuary powers of legislation still remain in the State. *Ib.*

9. Congress has power to provide for the punishment of offenses committed by persons serving on board a ship of war of the United States, wherever that ship may lie. But Congress has not exercised that power in the case of a ship lying in the waters of the United States; the words "within any fort, arsenal, dock-yard, magazine, or in any other place or district of country under the sole and exclusive jurisdiction of the United States," in the third section of the act of 1790, ch. 9, not extending to a ship of war but only to objects in their nature fixed and territorial. *Ib.*

10. (Feb., 1820.) The courts of the United States have no jurisdiction, under the act of April 30, 1790, c. 36, of the crime of manslaughter, committed by the master, upon one of the seamen on board a merchant vessel of the United States, lying in the river Tigris, in the empire of China, thirty-five miles above its mouth, off Wampoa, about one hundred yards from the shore, in four and a half fathoms of water, and below low water-mark. *United States v. Wiltberger*, 5 Wheat. 76.

11. In the act of April 30, 1790, c. 36, the description of places contained in the eighth section within which the offenses therein enumerated must be committed, in order to give the courts of the Union jurisdiction over them, cannot be transferred to the twelfth section, so as to give those courts jurisdiction over a manslaughter committed in the river of a foreign country, and not on the high seas. *Ib.*

12. (Oct., 1876.) Whether a matter for which a party is indicted in the District Court, is, or is not, a crime against the laws of the United States, is a question within the jurisdiction of that Court, which it must decide. *Ex parte Parks*, 3 Otto, 18.

13. (March, 1852.) The courts of the United States have jurisdiction over the offense of plundering or stealing property from, or belonging to a vessel, although she may be lying upon

the shore; and even if the property has been plundered after it has been separated from the vessel and thrown upon the shore. *United States v. Pitman*, 1 Sprague, 196.

14. (July, 1855.) An offense committed within the United States must be tried in the State and judicial district within which it was committed. *United States v. Bird*, 1 Sprague, 299.

15. If committed without the limits of the United States, on the high seas, it must be tried in the district where the offender is apprehended, or into which he may be first brought. *Ib.*

16. By being brought within a district, is meant, brought in legal custody, and not merely being conveyed thither by the ship in which the offender first arrives. *Ib.*

17. (July, 1863.) Construction of U. S. Statutes, 1863, chap. 81, sec. 3.—What court is to make the order therein provided for, respecting the discharge of State prisoners and prisoners not of war, against whom no indictment shall be found. *In re Blum*, 2 Sprague, 73.

18. (1866.) A prosecution for burglary is “a cause affecting” the owner of the building entered, within the meaning of sec. 3 of the civil rights act, giving the courts of the Union jurisdiction of all causes affecting persons who cannot enforce in the courts of the State any of the rights secured to them by the first section. If the owner of the building entered is, on account of color, incompetent, by the law of the State where the offence is alleged to have been committed, to testify in support of the indictment as a white person might, the Circuit Court has jurisdiction. *United States v. Rhodes*, 1 Abb. U. S. 28.

19. The criminal jurisdiction conferred upon the Circuit and District Courts by sec. 3 of the civil rights act is not confined to offenses committed by colored persons. It extends to prosecutions against white persons for offenses affecting persons who cannot enforce in the State Courts the rights secured to them by section 1. [Opinion by Mr. Justice Swayne, in the Seventh Circuit, and District of Kentucky.] *Ib.*

20. (April, 1823.) Jurisdiction of courts of admiralty, as to misdemeanors committed on the seas. *Corfield v. Coryell*, 4 Wash. 371.

21. (1877.) The law of the United States (especially sec. 5347 of the United States Revised Statutes) follows an American vessel wherever she may be on navigable waters, so

that an offense committed on board such vessel is an offense against the United States, though the vessel be in the harbor or river of a foreign country. *United States v. Bennett*, 3 Hughes, 466.

22. (March, 1867.) The great lakes are not "high seas" within the meaning of the act of July 29, 1850, punishing the burning of vessels. [The District Court has no jurisdiction of such an offense committed on the lakes.] *Henry Miller's Case*, 1 Brown, 156.

23. (Nov., 1836.) Congress specifically defined the boundaries of the State of Arkansas, and by giving the District Court thereof such powers only as were conferred on the District Court of Kentucky by the Judicial Act of 1789, necessarily excluded jurisdiction beyond the boundaries of the State of Arkansas; and therefore, a crime committed in the Indian country west of Arkansas, is not triable in the District Court. *United States v. Ta-wan-ga-ca*, Hempst. 304.

24. A person indicted for murder in the late Superior Court [of the Territory of Arkansas], and not tried, cannot be committed nor tried in the District Court [for the District of Arkansas], on that charge, the latter not being the successor of the former, and the business of the Superior Court not having been continued over to the District Court, by act of Congress. *Ib.*

25. (May, 1868.) The right to exercise jurisdiction over the crime of murder having been vested in the State of Kansas by the act admitting her as a State, and she never having parted with that right, it cannot belong to the United States. *United States v. Stahl*, McCahon, 206.

26. The courts of the United States have no jurisdiction of the crime of murder committed upon the military reservation of Fort Harker, in the State of Kansas. *Ib.*

27. (Dec., 1872.) The jurisdiction of the District Court for the District of Oregon, over offenses committed in Alaska, is conferred by section 7 of the act of July 27, 1868 (15 Stat. 240), and by such section confined to violations of that act and the laws "relating to customs, commerce, and navigation," and therefore it has no jurisdiction over the crime of distilling spirits therein without paying a tax therefor. *United States v. Seveloff*, 2 Sawyer, 312.

28. (March, 1875.) Alaska being a place without the limits

of any State or judicial district of the United States, within the meaning of sec. 14 of the act of March 3, 1825 (4 Stat. 118, R. S. sec. 730), this court has jurisdiction to try a person charged with the commission of a crime therein; provided such person is found in the District of Oregon, or first brought here. *United States v. Carr*, 3 Sawyer, 302.

29. (Sept., 1877.) After a State has been admitted into the Union, the fact that within its boundaries, land, the fee of which is in the United States, is set apart as an Indian reservation, is not enough, of itself, to give a United States court jurisdiction to try a person for a murder committed within the limits of such reservation. *Ex parte Sloan*, 4 Sawyer, 330.

Indictment.

1. (May, 1815.) The grand jury having received testimony of a person not under oath, the indictment was quashed, as irregularly found. *United States v. Coolidge*, 2 Gall. 364.

2. (May, 1881.) Under sec. 3 of the act of March 3, 1875 (18 Stat. 477), the importation of women for the purposes of prostitution, from all countries, is forbidden, and not merely the importation of them for such purposes from China, Japan, and other Oriental countries.

In an indictment under said sec. 3, it is not necessary to set forth the acts constituting the importation. *United States v. Johnson*, 19 Blatchf., 257.

3. (May, 1881.) The averment in the information, that the person who delivered the spirits to the defendant was unknown to the district attorney, was unnecessary and did not require to be proved. *United States v. Byrne*, 19 Blatchf. 260.

4. (May, 1865.) Counts for conspiracy cannot be joined with counts for murder. *United States v. Scott*, 4 Biss. 29.

5. In what cases an indictment will be sufficient, which charges the crime in the terms of the statute creating it. *Ib.*

6. Requisites of a good indictment for murder, under an act of Congress punishing opposition to the enrollment of the national forces. *Ib.*

7. In the national courts there can be no indictment unless some act of Congress authorizes it: *Ib.*

8. (Nov., 1865.) An indictment for possessing forged treas-

ury notes and postal currency with intent to pass them, must profess to give, and must actually give, exact copies of them, or allege a reasonable excuse for not doing so. *Quære*, whether, in such a case, it is sufficient to paste the forged instruments themselves on the indictment as a part of it. *United States v. Fisler*, 4 Biss. 59.

9. To charge in the indictment in such a case, that the prisoner had in possession "divers" such forged instruments, is too indefinite. The number ought to be stated. *Ib.*

10. (June, 1867.) When an offense is prohibited by several statutes, it is usual to conclude the indictment *contra formam statutorum*. But a conclusion *contra formam statuti* in such a case will not be sufficient to support a motion in arrest of judgment. So, a conclusion in the plural where there is but one prohibitory statute, is not ground for motion in arrest of judgment. *United States v. Trout*, 4 Biss. 105.

11. An indictment for forging treasury notes need not in terms give them that name. The court will determine what they are, by the copies of them set out in the indictment. *Ib.*

12. In an indictment for forging a treasury note, it is not necessary to aver that it was made in the resemblance of the genuine notes. *Ib.*

13. (Dec., 1867.) Under the Internal Revenue Laws, when the punishment prescribed is a pecuniary penalty or fine only, and the act fixes the exact amount of it, the action of debt will lie to recover it. *United States v. Ebner*, 4 Biss. 117.

14. Where the punishment provided is a fine only, and the amount of it is not fixed, but left to the discretion of the court, the prosecution for it must be by indictment. *Ib.*

15. In all cases in which the law provides that imprisonment either may or must be any part of the punishment, the prosecution must be by indictment. *Ib.*

16. (Feb., 1869.) An indictment for the felonious possession of a forged national bank-note, need not aver that the forged instrument purported to be a note of any designated national bank, if the instrument be copied into the indictment, and if by the terms of such copy, it purports to be such a note. *United States v. Williams*, 4 Biss. 302.

17. In an indictment for the felonious possession of a forged national bank-note, it is not necessary that the indictment

should aver that the bank is a legal corporation. The national courts will judicially take notice of the existence of all national banks. *Ib.*

18. (Dec., 1870.) In an indictment under the act of July 13, 1868, for removing malt liquors without affixing and canceling the proper stamps, it is not necessary to negative the cases where the law authorizes a removal without affixing a stamp. *United States v. Schimer*, 5 Biss. 195.

19. The presumption is that the liquor is only to be removed when sold or ready for sale; and if the removal was in a case allowed by law, that fact should be set up by way of defense. *Ib.*

20. Where an exception in an act does not occur in the enacting clause, it is not necessary to set it out or negative it in the indictment. It is matter to be set up by way of defense. *Ib.*

21. In an indictment for a statutory misdemeanor, it is not necessary to charge the offense with the particularity of time, place, and circumstance required for a felony, or common-law offense; and if the defendant desires greater particularity, he should apply to the court for a rule for such specifications and particulars as will enable him properly to prepare for trial. The prosecution will be held strictly to their bill of particulars. *Ib.*

22. (June, 1875.) Where an indictment for receiving stolen goods charges that the accused received the goods from the principal felon, and the proofs show that they were received from a person to whom the thief had delivered them, the variance is fatal. *United States v. DeBare*, 6 Biss. 358.

23. (March, 1871.) All persons who deal in tobacco are not liable to pay a special tax; and therefore an indictment which charges that a person was a dealer in tobacco without paying the special tax, is not sufficient; but the indictment should also show, that he was such a dealer as is required to pay such tax. *United States v. Howard*, 1 Sawyer, 507.

24. (Dec., 1873.) An allegation in an indictment, that the defendant offered a party \$2.50 to vote, is equivalent to an allegation that he counseled and advised such party to vote. *United States v. Hendric*, 2 Sawyer, 476.

25. Allegations in the first count in an indictment may be adopted in the second one by referring to them; and the words "said Johnson" in a second count indicate the Johnson mentioned and described in the first count, including his status or

condition as therein stated, with reference to the charge made in the indictment. *Ib.*

26. (Dec., 1873.) An allegation in an indictment, that a party claimed a right to vote at an election, is not equivalent to an allegation that such party was a qualified voter. *United States v. Hendric*, 2 Sawyer, 479.

27. (Dec., 1873.) An allegation, that the defendant knowingly offered to give O. a bribe to vote, the said O. being then under twenty-one years of age, held to mean, that the defendant knew O. was under age when he offered him the bribe. *United States v. O'Neill*, 2 Sawyer, 481.

28. (Dec., 1873.) The court takes notice that the State of Oregon is a representative and judicial district of the United States. *United States v. Johnson*, 2 Sawyer, 482.

29. An allegation that an election was held at East Portland precinct, is equivalent, under the circumstances, to an allegation that an election was held in such precinct. *Ib.*

30. An averment, that an election was held in a certain precinct on the day prescribed for holding such election, is sufficient, it being presumed, under the circumstances, that such election was legal. *Ib.*

31. *Semble*, that an allegation, that defendant gave B. \$2.50 to vote at said election, is sufficiently certain. *Ib.*

32. (May, 1875.) In an indictment under sect. 2139 of the Revised Statutes, for disposing of spirituous liquors to an Indian, it is necessary to allege that the defendant is not an "Indian in the Indian country." *United States v. Winslow*, 3 Sawyer, 337.

33. An allegation in an indictment, that the defendant did the act charged, "on or about" a certain day, is void for uncertainty; it does not show but that the action is barred by lapse of time. *Ib.*

34. (1866.) An indictment need not aver the existence or the provisions of a public statute upon which the prosecution is founded. *United States v. Rhodes*, 1 Abb. U. S. 28.

35. (Nov., 1870.) An indictment for the offense of smuggling must allege the facts relied upon as rendering the importation alleged an offense, or state the particular illegality intended to be proved. *United States v. Thomas*, 2 Abb. U. S. 114.

36. (Oct., 1863.) An indictment for treason, under sect. 2 of the act of July 17, 1862 (12 Stat. 590), need not use the phrase

“levying war” specifically; to follow the language of the act is sufficient. *United States v. Greathouse*, 2 Abb. U. S. 364.

37. (March, 1870.) An indictment for “falsely making,” &c., coin of the United States, under sect. 20 of the Crimes Act of 1825 (4 Stat. 121), need not aver an intent to pass the coin as true, nor an intent to defraud. *United States v. Peters*, 2 Abb. U. S. 494.

38. (June, 1855.) Two or more persons charged with committing an offense in its nature several, cannot be joined in the same indictment. *United States v. Kazinski et al.*, 2 Sprague, 7.

39. (July, 1863.) An indictment for aiding in fitting out a vessel for the slave trade, under Act of Congress of 1818, chap. 91, sect. 3, must contain an allegation that the vessel was fitted out for that trade by some person other than the defendant, and that that person had the intent to employ her in that trade, and that the defendant did aid and abet such person in so fitting out. It must also aver that the fitting out was done at a port within the United States. It is not sufficient to allege that the defendant had the intent, or that the aiding by the defendant was at a port in the United States. *United States v. Kelly*, 2 Sprague, 77.

40. (Jan., 1868.) In an indictment on sec. 23 of the act of July 13, 1866 (14 Stat. 153), for carrying on the business of a distiller of spirits without paying the special tax, it is not necessary to set forth the particular acts of distilling or the kinds of spirits. *United States v. Fox*, 1 Lowell, 199.

41. “Then and there distilling and manufacturing spirits to a very large amount, to wit, to the amount and number of one thousand gallons of proof spirit,” is a sufficient affirmative allegation that the defendant did distill. *Id.*

42. “Gallons of proof spirit,” in that connection, means the same thing as the proof gallons of spirit mentioned in the statute, that is, the gallons, which, if the liquor were of exact proof, it would measure; and the evidence will not be confined to spirits which are actually of proof strength. *Id.*

43. Such an indictment is not open to objection as multifarious, if it charges in the same count that the defendants and each of them carried on the business. *Id.*

44. Where the law substituting special taxes for licenses took effect upon distillers from and after Sept. 1, 1866, and the charge

was that the defendants carried on the business of distillers on the first of September, 1866, and thence to the tenth of December, 1866, without paying the special tax required by law, and under the former law licenses were issued for the business, to run from May to May, though for a similar fee: *Quære*, whether a person licensed under the old law, May 1, 1866, may not continue the business without further payment to May 1, 1867. *Ib.*

45. *Held* such a person would not be indictable for continuing the business until due assessment of the additional fee, if any, had been made; and an indictment which showed the business to have been begun under the old law and continued under the new, should negative the payment of the license fee, or of the additional fee, as well as of the special tax. *Ib.*

46. (March, 1868.) The doctrine of charging an offense in the words of the statute, considered. *United States v. Reed*, 1 Lowell, 232.

47. Sect. 25 of the act of 1866 (14 Stat. 154), requiring the maker of a still to be used for the purpose of distilling, to notify the collector where such still is to be used or sent, and by whom it is to be used, and of its capacity, &c., means that the maker of every still intended for distilling spirits within the United States must notify the collector of internal revenue of the district in which it is intended to be so used, of these particulars; and an indictment should supply the omissions of the statute, and allege the offense according to its true meaning. *Ib.*

48. A charge that the defendant made a still, "to be used for the purpose of distilling;" and that the same was removed with the defendant's knowledge and consent "to a district within the United States, to your jurors unknown, without notifying the collector of the district in which said still was intended to be used," of the requisite particulars, is defective for not alleging affirmatively that the still was intended to be used within the United States, and for distilling spirits, and that the defendant failed to give the notice, and that the district in which it was to be used was unknown to the jury. *Ib.*

49. (July, 1868.) In an indictment under the act of March 2, 1867, sec. 30, (14 Stat. 484,) for a conspiracy to defraud the United States, the subject-matter of the conspiracy is sufficiently described as, "The taxes arising from and imposed by law upon certain divers proof gallons and quantities of distilled spirits, dis-

titled in the United States, then and there situated in certain bonded warehouses," describing the warehouses. The precise kinds, quantities, and qualities of spirits need not be stated, because the description is sufficient to show that the goods were liable to taxes. *United States v. Boyden*, 1 Lowell, 266.

50. The overt acts need not be laid as having been done "to effect the object" of the conspiracy, although these are the words of the statute; it is enough to say that they were done "in pursuance" thereof, which are the usual words in conspiracy. *Ib.*

51. An officer of the revenue may be joined with other persons in such an indictment, without charging him as an officer, notwithstanding that by the act of March 31, 1868, sec. 6 (15 Stat. 60), such an officer is liable to a greater penalty than other persons. But under such an indictment he can only be sentenced to the lesser punishment. *Ib.*

52. The caption of the indictment may be referred to, to show that the United States mentioned in the body of the indictment are the United States of America. *Ib.*

53. (1869.) An indictment for omitting property and effects from the bankrupt's schedule need not allege that the bankrupt took the oath of allegiance prescribed by sec. 11 of the Bankrupt Act. *United States v. Clark*, 1 Lowell, 402.

54. (April, 1872.) In an indictment under sec. 12, Stat. July 1, 1864 (13 Stat. 307), against a clerk in the post-office for secreting and embezzling a letter containing a bank-note, which describes the letter according to its direction, which is to some one other than the defendant, it is not necessary to allege that the letter or the note was the property of any one. *United States v. Laws*, 2 Lowell, 115.

55. If the letter was inclosed in an envelope, and the envelope was directed to A. B., the letter is well described as directed to A. B. *Ib.*

56. The indictment need not allege that the clerk obtained the letter by virtue of his employment: it is enough that, being a clerk, he has obtained possession of the letter. *Ib.*

57. It is not necessary to set out the places from and to which the letter was to be carried by post. *Ib.*

58. The indictment need not allege that the grand jury was duly organized, and that twelve concurred in the finding. *Ib.*

59. (Nov., 1868.) The general rule is that, in an indictment

for an offense created by statute, it is sufficient to describe the offense in the words of the statute. If the defendant insists upon greater particularity, it is for him to show that the case falls within some exception to the general rule. *United States v. Henry*, 3 Ben. 29.

60. In an indictment under the forty-second section of the Internal Revenue Act of July 13, 1866 (14 Stat. 162), for executing a fraudulent bond, it is not necessary to set out the particulars in which the bond is fraudulent, or the particular manner in which the payment of the tax was evaded, or in which the bond was used, or attempted to be used, in fraud of the revenue law, or in which the accused executed the bond or procured it to be executed, or connived at its execution. *Ib.*

61. (Jan., 1869.) Unless the date stated in an indictment is of the essence of the crime, it need not be proved as alleged. *United States v. Blaisdell*, 3 Ben. 133.

62. (Oct., 1870.) Where a pension agent was found guilty, under that clause of the act of July 4, 1864, under an indictment which alleged that two minor children were pensioners, and that the accused had been employed as the agent of V., the guardian of the minors, to collect the pension, and that the pension had been paid to him, and that it was his duty to pay the same to the guardian, which he had refused to do; and the pension certificate, which was in evidence, showed that the pension was "payable to V., as guardian of the minors;" and a motion was made to arrest the judgment, —

Held, that the guardian might perhaps, on the certificate, be properly considered as the pensioner, in her representative capacity; but that this motion must be determined on the language of the indictment: and as the indictment alleged that the minors were the pensioners, and did not allege a withholding of the pension from them, but from V., it did not state any offense against the act, and the judgment must be arrested. *United States v. Chaffee*, 4 Ben. 330.

63. (Nov., 1870.) An indictment for illegally importing foreign goods is insufficient when it does not show the facts constituting the illegality of the importation alleged, or state the particular illegality intended to be proved. *United States v. Thomas*, 4 Ben. 370.

64. If an indictment set out an offense with greater particu-

larity than is required, the proof must correspond with the averments, and nothing descriptive of the offense can be rejected as surplusage. *Ib.*

65. (May, 1846.) In an indictment under the act of March 3, 1825, for embezzling a letter containing a bank-note, it is not necessary to state the particular office held by the accused. *United States v. Clark*, Crabbe, 584.

66. Neither is it necessary to allege the note to have been of an incorporated bank, or of any value. *Ib.*

Information. Criminal Cases.

1. (June, 1870.) An offense against the laws of the United States, which is of a character not capital or infamous, may be prosecuted in the courts of the United States, by an information, according to the course of the common law. *United States v. Shepard*, 1 Abb. U. S. 431.

2. The proper course of proceeding in issuing a criminal information explained. *Ib.*

3. (Feb., 1869.) An information prosecuted in a District Court must be regarded and treated as a common-law proceeding; except in that aspect a District Court can have no jurisdiction of it. *United States v. Stevenson*, 1 Abb. U. S. 495.

Plea. Criminal Cases.

1. (May, 1881.) A defendant when arraigned on an information filed against him for an offense against section 3894 of the Revised Statutes, in depositing in the mail a circular concerning a lottery, stood mute. On the direction of the court, a plea of not guilty was entered for him. He was convicted. *Held*, no error. *United States v. Borger*, 19 Blatchf. 249.

2. The word "indicted," in section 1032 of the Revised Statutes, includes an information. *Ib.*

3. (March, 1854.) Persons charged with a misdemeanor may, in the discretion of the court, be allowed to plead and defend in their absence. *United States v. Leckie*, 1 Sprague, 227.

4. The conditions stated upon which this privilege will generally be allowed. *Ib.*

5. (July, 1873.) In a trial upon an indictment, the defendant

may take advantage of the bar of the Statute of Limitations, under the plea of not guilty. *United States v. Brown*, 2 Lowell, 267.

6. (May, 1874.) T. was indicted for offenses against the revenue laws, under the nineteenth section of the act of August 30, 1842 (5 Stat. 565), and the fourth section of the act of July 18, 1866 (14 Stat. 179). A civil action of debt was also brought against him by the United States, to recover double the value of the smuggled goods, for the receiving of which he was indicted, in accordance with the sixty-eighth and sixty-ninth sections of the act of March 2, 1799 (1 Stat. 678), and the second and fifth sections of the act of March 3, 1823 (3 Stat. 781). On August 30, 1871, he was convicted on the indictments, and was sentenced to be imprisoned for five months, and to pay a fine of \$1,000, and \$1,326.16, the costs of prosecution. He served out the imprisonment and paid the fine, but, being unable to pay the costs, received from the President of the United States a full pardon, on February 10, 1872. He then pleaded this indictment, sentence, and pardon in bar, in the civil suit. The United States demurred to the plea.

Held, that, under the fifth section of the act of June 1, 1872 (17 Stat. 197), the plea must be tested by the rules applicable in the courts of record of the State of New York, to an answer to a complaint ;

That the pardon was a bar to the suit ;

Whether the conviction under the indictment and the completion of the sentence imposed on such conviction would form a bar to such suit, *quære*. *United States v. Tilton*, 7 Ben. 306.

Examination upon Criminal Charge.

1. (June, 1870.) It is not lawful to arrest a person in one district, for an alleged offense against the laws of the United States, and remove him to another district for examination ; nor can a district judge authorize such removal. The offender, upon being arrested, is entitled to be taken before the proper officer of the district in which the arrest is made, for examination ; and if probable cause is not shown, or if (the case being bailable) he give bail, he is entitled to be discharged. It is only after a commitment upon the results of such examination that an order can

be made to remove him to the district in which the trial is to be had. *United States v. Shepard*, 1 Abb. U. S. 431.

Practice. Criminal Cases.

1. (Oct., 1814.) Practice on contempts. If the party purge himself on oath, the court will not hear collateral evidence for the purpose of impeaching his testimony, and proceeding against him for the contempt. But if perjury appear, the party will be recognized to answer, &c. *United States v. Dodge*, 2 Gall. 312.

2. (June, 1870.) Criminal proceedings in the courts of the United States are according to the course of the common law, except so far as has been otherwise provided by the Constitution or acts of Congress. They are not affected by the laws of the several States. *United States v. Shepard*, 1 Abb. U. S. 431.

3. (Feb., 1869.) Under the practice which has prevailed in the District Court for the Southern District of New York, an attachment may be issued in aid of a common-law information prosecuted by the United States. *United States v. Stevenson*, 1 Abb. U. S. 495.

4. (Nov., 1868.) Where, after a jury had been impaneled in a criminal case, the trial was postponed to another day by reason of the illness of the district attorney of the United States, and of the absence of witnesses for the prosecution, and, on the adjourned day, an application was made by the assistant district attorney that the cause go off for the term, on the same grounds as before, and thereupon the court directed a juror to be withdrawn, which was done, and the trial was postponed, (the minutes of the court not showing that the defendants consented to this course), and, when the indictment was again called, the defendants objected that such proceedings were equivalent to an acquittal, —

Held, that the question must be disposed of as it would have been when the application was made to put the cause off for the term, if the defendants had then expressed their dissent from such a course;

That the minutes of the court must be the guide to the court as to what took place on that motion;

That, as it did not appear by the minutes that the defendants consented to the postponement, it must be held that they did not consent;

That, as it did not appear by the minutes that the illness of the district attorney occurred after the jury was sworn, or that it was impossible for the assistant district attorney to conduct the trial, such illness did not show a manifest necessity for withdrawing a juror;

That as the minutes did not show that the absence of witnesses was first made known to the law officers of the government after the jury was sworn, or that it occurred under such circumstances as to create a manifest necessity for withdrawing a juror, the position of the case entitled the defendants to a verdict of acquittal, when the motion to put the cause off was made;

That the proceedings on the former trial were equivalent to an acquittal, and the defendants and their bail were entitled to be discharged from all further liability in respect of the indictment. *United States v. Watson*, 3 Ben. 1.

Jury. Criminal Cases.

1. (May, 1815.) The court has power to discharge the jury impaneled to try the issue in a criminal cause, whenever it is necessary for the purposes of justice — and there is no exception of capital cases. *United States v. Coolidge*, 2 Gall. 363.

2. (May, 1881.) On the trial, the name of a juror who had been summoned, and who attended court on the day the trial began, was drawn from the jury box in due order of lot, to try the defendant, but he had departed without leave. *Held*, that it was not error to proceed and complete the jury, without waiting for the juror so absent, by drawing one in his place. *United States v. Byrne*, 19 Blatchf. 260.

3. (Dec., 1868.) Nothing that is a cause of challenge to a juror before verdict, can be used to set aside a verdict. *United States v. Baker*, 3 Ben. 68.

4. Where one of the jurors in a criminal trial was deaf, and the defendant was ignorant of the fact when the jury was impaneled, —

Held, that this was no cause for setting aside the verdict. *Ib.*

Witnesses, in Criminal Cases.

1. (May, 1815.) One, who was not a Quaker, being called as a witness, and refusing to be sworn, on the ground of conscientious scruples arising from a declaration formerly made, was committed for a contempt, the liberty to affirm being strictly confined to Quakers, by the laws and practice of Massachusetts. *United States v. Coolidge*, 2 Gall. 364.

2. (Jan., 1869.) If a witness subpoenaed by the government has means to travel, it is not necessary for the officer to tender his traveling expenses; and the court will attach a witness who, on that ground, neglects to attend. *United States v. Durling*, 4 Biss. 509.

3. The officer summoning witnesses should see that those who have no means to travel are provided with necessary funds. *Ib.*

4. It is the duty of the district attorney, in criminal proceedings by the government, where he has any doubt whether witnesses will attend, to have them properly recognized. *Ib.*

5. (June, 1870.) It is not necessary that the names of witnesses for the prosecution should be indorsed on the indictment or information preferred in a court of the United States, although such indorsement may be required by statute of the State. *United States v. Shepard*, 1 Abb. U. S. 431.

6. (June, 1867.) Where a commission was issued by a judge in Cuba to the Spanish Consul in New York to take testimony to be used in a criminal prosecution for swindling, and the consul thereupon applied to the District Court for a summons to compel the witnesses to appear and testify, — *Held*, that the only provision made by Congress on the subject of enforcing the giving of testimony in judicial proceedings pending in a foreign country, are found in the acts of March 2, 1855 (10 Stat. 630), and of March 3, 1863 (12 Id. 769). *In the Matter of the Petition of the Spanish Consul at New York*, 1 Ben. 225.

7. That neither of those acts applied to this case, and the court had no power to issue the summons asked for. *Ib.*

Motions. Criminal Cases.

1. (Feb. 1795.) The prisoner had been committed upon the warrant of the district judge of the Pennsylvania district, charg-

ing him with high treason. Motion was made for his discharge absolutely, or upon reasonable bail, founded upon affidavits tending to show his innocence.

The Supreme Court directed that the prisoner be admitted to bail. *United States v. Hamilton*, 3 Dall. 17, 18.

2. (May, 1815.) In every case of a motion to the court for a *cassetur*, the facts on which it is grounded, must be proved by affidavit. *United States v. Coolidge*, 2 Gall. 364.

3. (May, 1881.) A motion in arrest of judgment can be granted only on some objection arising on the face of the record. *United States v. Byrne*, 19 Blatchf. 260.

4. (June, 1870.) Where a motion to quash an indictment is founded upon the allegation that no evidence whatever of defendant's guilt was adduced in support of the application for a warrant for his arrest, the court may inquire into this allegation, and if it is established, quash the indictment; though the court cannot inquire into the sufficiency of such evidence, if any was produced. *United States v. Shepard*, 1 Abb. U. S. 431.

5. A certified copy of an information filed for an offense against the laws of the United States, without copies of some oath or affirmation to facts showing probable cause to believe the defendant guilty, does not authorize issuing a warrant of arrest. *Ib.*

6. (March, 1871.) A motion to set aside or quash an indictment will not lie, unless the objection appear upon the face of the indictment. *United States v. Brown*, 1 Sawyer, 531.

7. An affidavit of a defendant, that he believed the grand jury acted upon incompetent or insufficient evidence in finding an indictment against him, not allowed on a motion to quash. *Ib.*

NEW TRIAL. CRIMINAL CASES.

1. (May, 1881.) A point not made at the trial is not available as a ground for granting a new trial. *United States v. Byrne*, 19 Blatchf. 260.

2. (July, 1868.) If a defendant is aware that one of the jurors is asleep during some part of the trial, he should call attention to the fact at the time. It is not ground for a new trial if first brought forward after verdict. *United States v. Boyden*, 1 Lowell, 266.

Sentence. Criminal Cases.

1. (Jan., 1869.) Where a criminal is convicted on several offenses, under several counts of an indictment, he may be sentenced under the first count, and sentence may be suspended upon the conviction under the other counts till after the first sentence has been fully executed. *United States v. Blaisdell*, 3 Ben. 133.

Jurisdiction. Of Piracy, when.

Second. Of all cases arising under any act for the punishment of piracy, when no Circuit Court is held in the district of such court.

15 May, 1820, c. 113, v. 3, p. 600.

30 Jan., 1823, c. 7, v. 3, p. 721.

3 Mar., 1823, c. 72, v. 3, p. 789.

1. (Feb., 1826.) American ships offending against our own laws may be seized upon the ocean, and foreign ships, thus offending within our territorial jurisdiction, may be pursued and seized upon the ocean, and brought into our ports for adjudication. *The Marianna Flora*, 11 Wheat. 2.

2. (Jan., 1827.) A question of probable cause of seizure, under the Piracy Acts of March 3, 1819, ch. 75, and May 15, 1820, ch. 112. *The Palmyra*, 12 Wheat. 1.

3. In such a case, although the crew may be protected by a commission *bona fide* received and acted under, from the consequences attaching to the offense of piracy by the general law of nations, although such commission was irregularly issued; yet, if the defects in the commission be such as, connected with the insubordination, and predatory spirit of the crew, to excite a justly founded suspicion, it is sufficient, under the act of Congress, to justify the captors for bringing in the vessel for adjudication, and to exempt them from cost and damages. *Ib.*

4. Although probable cause of seizure will not exempt from costs and damages, in seizures under mere municipal statutes, unless expressly made a ground of justification by the law itself, this principle does not extend to captures *jure belli*, nor to marine torts generally, nor to acts of Congress authorizing the exercise of belligerent rights to a limited extent, such as the Piracy Acts of March 3, 1819, ch. 75, and May 15, 1820, ch. 112. *Ib.*

5. (Nov., 1813.) The Circuit Court has cognizance under the act of the 30th of April, 1790, ch. 9, sec. 8, of piracy on board of an American ship, although committed in an open roadstead, adjacent to a foreign territory, and within a half mile of the shore. *United States v. Ross*, 1 Gall. 624.

6. The "high seas," in that act, mean any waters on the sea coast, which are without the boundaries of low water mark. *Ib.*

Jurisdiction. Penalties and forfeitures.

Third. Of all suits for penalties and forfeitures incurred under any law of the United States.

24 Sept., 1789, c. 20, s. 9, v. 1, p. 76.

1. (1796.) The district court has exclusive cognizance of informations and suits for forfeitures. *Ketland qui tam. v. The Cassius*, 2 Dall. 365. •

2. (Aug., 1796.) But a third proceeding had been instituted against the privateer, in which the district attorney filed, *ex officio*, an information, stating "that *Aquila Giles*, marshal of the said district, had seized to the use of the *United States*, as forfeited, a certain schooner, or vessel, called *La Vengeance*, with her tackle, apparel, and furniture, the property of some person or persons, to the said attorney unknown; for that certain cannons, muskets, and gunpowder, to wit, two cannons, twenty muskets, and fifty boxes of gunpowder, were, between the 22d of May, 1794, and the 22d of May, 1795, exported in the said schooner, or vessel, from the *United States*, to wit, from *Sandy Hook* in the State of *New Jersey* (that is to say, from the city of New York, in the New York district), to a foreign country, to wit, to *Port-de-Paix*, in the island of *St. Domingo*, in the *West Indies*, contrary to the prohibitions of the act, in such case made and provided," &c.; and praying judgment of forfeiture accordingly.

BY THE COURT: We are perfectly satisfied upon the two points that have been agitated in this cause. In the first place, we think, that it is a cause of admiralty and maritime jurisdiction. The exportation of arms and ammunition is, simply, the offense; and exportation is entirely a water transaction. It appears, indeed, on the face of the libel, to have commenced at *Sandy Hook*; which, certainly, must have been upon the water. In the next place, we are unanimously of opinion, that it is a civil cause. It

is a process of the nature of a libel *in rem*; and does not, in any degree, touch the person of the offender. *United States v. La Vengeance*, 3 Dall. 297.

3. (Feb., 1805.) The question of forfeiture of a vessel under the act of Congress against the slave trade, is of admiralty and maritime jurisdiction. *United States v. Schooner Sally*, 2 Cranch, 406.

4. (Feb., 1815.) If a seizure by a collector, for a violation of the revenue laws of the United States, be voluntarily abandoned, and the property restored before the libel or information be filed and allowed, the District Court has not jurisdiction of the cause. *Brig Ann*, 9 Cranch, 289.

5. (Feb., 1817.) The courts of the United States have exclusive jurisdiction of all seizures made on land or water, for a breach of the laws of the United States; and any intervention of a State authority which, by taking the thing seized out of the hands of the United States officer, might obstruct the exercise of this jurisdiction, is unlawful. *Slocum v. Mayberry*, 2 Wheat, 1.

6. In such a case, the court of the United States, having cognizance of the seizure, may enforce a redelivery of the thing, by attachment, or other summary process. *Ib.*

7. The question under such a seizure, whether a forfeiture has been actually incurred, belongs exclusively to the courts of the United States; and it depends upon the final decree of such courts, whether the seizure is to be deemed rightful or tortious. *Ib.*

8. If the seizing officer refuse to institute proceedings to ascertain the forfeiture, the District Court may, upon application of the aggrieved party, compel the officer to proceed to adjudication, or to abandon the seizure. *Ib.*

9. And if the seizure be finally adjudged wrongful, and without probable cause, the party may proceed, at his election, by a suit at common law, or in the Instance Court of Admiralty, for damages for the illegal act. *Ib.*

10. But the common law remedy, in such a case, must be sought for in the State courts; the courts of the United States having no jurisdiction to decide on the conduct of their officers, in the execution of their laws, in suits at common law, until the case shall have passed through the State courts. *Ib.*

11. Where a seizure was made, under the eleventh section of

the Embargo Act of April, 1808, no power is given by law to detain the cargo, if separated from the *vessel*, and that the owner had a right to take the cargo out of the vessel and to dispose of it in any way not prohibited by law ; and, in case of its detention, to bring an action of replevin therefor in the State Court. *Ib.*

12. (Feb., 1818.) The courts of the United States have an *exclusive* cognizance of the questions of forfeiture, upon all seizures made under the laws of the United States ; and it is not competent for a State Court to entertain or decide such question of forfeiture. *Gelston v. Hoyt*, 3 Wheat. 246.

13. (Feb., 1818.) The United States Courts have exclusive jurisdiction of questions of forfeiture, under the laws of the United States. Their sentence of condemnation or acquittal is conclusive. *Gelston v. Hoyt*, 3 Wheat. 311.

14. (Feb., 1824.) The District Court of the district where the seizure was made, and not where the offense was committed, has jurisdiction of proceedings *in rem* for an alleged forfeiture. *The Merino*, 9 Wheat. 391.

15. If the seizure is made on the high seas, or within the territory of a foreign power, the jurisdiction is conferred on the court of the district where the property is carried and proceeded against. *Ib.*

16. A municipal seizure, within the territory of a foreign power, does not oust the jurisdiction of the District Court into whose district the property may be carried for adjudication. *Ib.*

17. (Feb., 1825.) The District Courts have jurisdiction, under the Slave Trade Acts, to determine who are the actual captors, under a State law made in pursuance of the fourth section of the Slave Trade Act of 1807, c. 77, and directing the proceeds of the sale of the negroes to be paid "one moiety for the use of the commanding officer of the capturing vessel," &c. *The Josefa Segunda*, 10 Wheat. 312.

18. (Jan., 1827.) The lien for duties cannot, in any case, be enforced by a libel of information in the admiralty ; the revenue jurisdiction of the District Courts, proceeding *in rem*, only extending to cases of seizures for *forfeitures*, under laws of impost, navigation, or trade of the United States. *United States v. 350 Chests of Tea*, 12 Wheat. 487.

19. But a suit at common law may be instituted in the District or Circuit Courts, in the name of the United States, founded

upon their legal right to recover the possession of goods upon which they have a lien for duties, or to recover damages for the illegal taking or detaining the same. *Ib.*

20. (Oct., 1876.) The jurisdiction acquired by the seizure of property, in a proceeding *in rem*, for its condemnation for alleged forfeiture, is not to pass upon the question of forfeiture absolutely, but to pass upon that question after opportunity has been afforded to its owner, and parties interested, to appear and be heard upon the charges for which the forfeiture is claimed. To that end, some notification of the proceedings, beyond that arising from the seizure, prescribing the time within which the appearance must be made, is essential. *Windsor v. McVeigh*, 3 Otto, 274.

21. In proceedings before the District Court, in a confiscation case, monition and notice were issued and published; but the appearance of the owner, for which they called, when made, was stricken out, his right to appear being denied by the court. *Held*, that the subsequent sentence of confiscation of his property was as inoperative upon his rights as though no monition or notice had ever been issued. The legal effect of striking out his appearance, was to recall the monition and notice as to him. *Ib.*

22. (Oct., 1878.) The order of the President for the seizure, under said act of July 17, 1862, of the property of persons engaged in armed rebellion against the United States, or in aiding and abetting the rebellion, is a prerequisite to the exercise by the District Court of its jurisdiction to adjudge the forfeiture and decree the condemnation of such property. *United States v. Winchester*, 9 Otto, 372.

23. Cotton found on land in Mississippi was, Feb. 18, 1863, seized by the naval forces of the United States, without the order of the President, and delivered by an officer of the navy to the Marshal of the United States for the Southern District of Illinois. A libel was filed in the District Court for that district, alleging as the ground of seizure, that the cotton belonged to a person in armed rebellion against the United States. The cotton was sold, and a decree rendered, whereby one half of the proceeds was paid into the treasury of the United States, and the other half ordered to be paid to the officer as informer, who declined to accept it, and the check therefor was deposited with

the assistant treasurer at St. Louis, on whom it had been drawn. At the instance of the Admiral, the Supreme Court of the District of Columbia sitting in admiralty, took jurisdiction of the case, and ordered the check to be deposited with the assistant treasurer at Washington, and the money to remain in his hands subject to the further order of the court. The check was so deposited, and the court by its decree distributed the money to the captors. *Held*, that the decrees were void; and that the owner of the cotton was entitled to recover the net proceeds of the sale of it. *Ib.*

24. (May, 1812.) The court has jurisdiction in revenue causes, although the property seized may never have come into possession of the officers of the court. *Schooner Bolina and Cargo*, 1 Gall. 75.

25. (Oct., 1813.) The place of seizure, and not the place of committing the offense, gives the court jurisdiction in cases of forfeitures *in rem*. *Ship Octavia*, 1 Gall. 488.

26. (April, 1835.) The Act of Congress of August 2, 1813 (L. U. S., Vol. 2, p. 611), giving to the State courts jurisdiction in certain specified cases of penalties, incurred under the laws of the United States, must be considered *pro tanto*, a repeal of the Judiciary Act of 1789, whereby exclusive original cognizance of the same was given to the District Courts. *Stearns ads. United States*, 2 Paine, 300.

27. The jurisdiction of the State courts, over federal causes, is confined to civil actions, for civil demands, or to enforce penal statutes. They have no criminal jurisdiction over offenses exclusively existing as offenses against the United States. *Ib.*

28. (May, 1865.) A District Court of the United States in New York, cannot acquire jurisdiction *in rem*, to declare a forfeiture, under those acts, [of Aug. 6, 1861, (12 Stat. at Large, 319); and of July 17, 1862, (Id., 589)] of shares in the capital stock of an Illinois corporation. *United States v. 1,756 Shares of Capital Stock*, 5 Blatchf. 232.

29. (March, 1867.) The question of releasing, on bond, property seized for a violation of the Internal Revenue Laws, considered. *United States v. Two Tons of Coal*, 5 Blatchf. 386.

30. Reasons assigned for refusing the privilege of bonding, in this case. *Ib.*

31. (June, 1871.) Jurisdiction to proceed by information for

the condemnation of property forfeited under the revenue laws, depends upon the possession of the property, actual or constructive. *United States v. Rectified Spirits*, 8 Blatchf. 480.

32. Property was seized, as forfeited for a violation of the internal revenue laws. Before any information was filed, the property was bonded, under sec. 48 of the act of June 30, 1864, as amended by sec. 9 of the act of July 13, 1866 (14 Stat. at Large, 111), and surrendered. An information was then filed against the property, counting on a violation of the said 48th section, and also of sec. 26 of the act of July 13, 1866 (14 Stat. at Large, 154). On the trial, in the District Court, there was a verdict for the claimant on the count based upon the said 48th section, and a verdict for the United States condemning the property, on the count based upon the said 26th section: *Held*, that the verdict of condemnation could not be sustained, because, when the information was filed, the property was not, actually or constructively, under seizure, as respected proceedings for a violation of the said 26th section. *Ib.*

33. Nor was the difficulty remedied by the fact that, after the information was filed, the property was resealed, and then taken possession of by the marshal, on a monition founded on the information, and then bonded by its owner. *Ib.*

34. (Dec., 1873.) Under secs. 23 and 24 of the act of March 2, 1799 (1 Stat. at Large, 645, 646), and secs. 8 and 25 of the act of July 18, 1866 (14 Id., 180, 184), the United States may proceed *in rem*, against a vessel, to recover a penalty for importing or bringing goods into the United States, which are not included or described in the manifest, according to the course of proceeding in a cause in admiralty, and may proceed against the vessel immediately and directly, without the delay incident to the previous prosecution of the master of the vessel, to recover such penalty.

Where a suit in admiralty is brought against such vessel and her master jointly, to recover such penalty, it is proper to dismiss the suit as to the master, on the ground that he is entitled to a trial by jury, and to proceed with it as against the vessel. *United States v. Steamship The Queen*, 11 Blatchf. 416.

35. (July, 1881.) Under sec. 4,609 of the Revised Statutes, originally sec. 11 of the act of June 7, 1872 (17 Stat. 264), no suit can be brought for a penalty for having received remunera-

tion for providing employment to seamen on a foreign vessel. *United States v. Kellum*, 19 Blatchf. 372.

36. Under sec. 4610, a civil suit for the penalties imposed by sec. 4609 may be brought in the name of the United States. *Ib.*

37. (April, 1811.) The *Sea Nymph* and her cargo were seized for a violation of the non-importation laws, in importing the goods seized, into the port of Philadelphia. The vessel and part of her cargo were seized in the river Delaware, and part of the cargo after it had been landed.

The ninth section of the Judiciary Act of the 24th of September, 1789, assigns to the District Courts jurisdiction of all cases purely of admiralty maritime jurisdiction, if they arise under the laws of impost, navigation, and trade, where the seizure is made in waters navigable for vessels of ten tons burden, from sea. In all other cases, where the seizure is on land or waters of less depth, the jurisdiction is on the common law side of the court. *Clark v. United States*, 2 Wash. 519.

38. Informations *in rem*, on the admiralty side of the District Courts, for forfeitures incurred under the laws of impost, have been sanctioned by the Supreme Court of the United States. *Ib.*

39. (May, 1818.) After a vessel has been seized and libeled, and a forfeiture claimed, the court of admiralty does not lose its jurisdiction to condemn the vessel, by losing possession of it. *United States v. Schooner Little Charles*, 1 Brock. 348.

40. (June, 1869.) In a libel to decree goods forfeited by reason of a fraud on the revenue laws, admiralty has jurisdiction, although part of the goods have been landed before the seizure. *Merchandise v. United States*, Chase, 502.

41. (Nov., 1872.) The penalty for a violation of the fourth section of the act approved Feb. 28, 1871 (16 Stat. 440), which forbids a steamer engaged in carrying passengers from carrying as freight any burning and explosive fluid, cannot be recovered by a proceeding *in rem*. An action of debt against the offending parties is the proper action. *United States v. The C. B. Church*, 1 Woods, 275.

42. (Sept., 1861.) A steamboat employed in transporting passengers between ports in the same State, is not liable to a penalty for not having the hull and boilers inspected, under the act of Congress of August 30, 1852; and the District Court has no jurisdiction. *The Seneca*, 1 Biss. 371.

43. (Oct., 1868.) Goods landed without a permit from the proper collector, and naval officer, if any, are subject to forfeiture to the United States. *United States v. Twenty Cases of Matches*, 2 Biss. 47.

44. The information is well brought under the fiftieth section of the act of March 2, 1799. *Ib.*

45. (May, 1865.) An information, under the Internal Revenue Law, claiming a forfeiture of a distillery and things connected with it, for a violation of that law, must describe with reasonable certainty the things on which a judgment of forfeiture is asked. It is not sufficient to describe them as "all the boilers, stills, and other vessels used in the distillation of spirits, and all the distilled spirits—being about twelve barrels—now in the distillery owned by Samuel W. Walts." *United States v. One Distillery*, 4 Biss. 26.

46. A pleading on a statute is not required to negative an exception in a proviso to it. *Ib.*

47. An information of this kind must aver that the property sought to be adjudged forfeited, was used in the illicit distillation charged, or (being spirits) was the product of such distillation. *Ib.*

48. (June, 1866.) No action of debt will lie on the seventy-third section of the Internal Revenue Law of June 30, 1864. *United States v. Morin*, 4 Biss. 93.

49. When a statute renders an offense punishable by imprisonment, or fine, or both, the district attorney cannot waive the imprisonment, and sue in debt for the fine. *Ib.*

50. *Quære*, whether debt will lie on a penal statute which does not fix the amount of the penalty. *Ib.*

51. (May, 1868.) A prosecution for a penalty, under the third section of the act of July 4, 1864, regulating the carriage of passengers on steamships, &c.,¹ must be by action of debt, and not a libel *in rem*. *The Nashville*, 4 Biss. 188.

52. (1872.) The jurisdiction of the District Court, as a revenue court, of condemnation proceedings against a distillery, is not defeated by the subsequent bankruptcy of the owners of the distillery. *United States v. Mackoy*, 2 Dill. 300.

53. (April, 1870.) Admiralty jurisdiction in revenue cases

¹ See 13 Stat. at Large, p. 390, and Revised Statutes, secs. 4423, 4424.

extends only to seizures for forfeitures under laws of impost, navigation, or trade of the United States, as conferred by sec. 9 of the Judiciary Act of 1789 (1 Stat. 76). A suit to enforce the payment of duties must be on the common law side of the court, and not in the admiralty. *United States v. 500 Boxes of Pipes*, 2 Abb. U. S. 501.

54. (Nov., 1869.) A suit against a vessel to recover a penalty for the importation of goods in her without being entered on her manifest, under the twenty-fourth section of the act of March 2, 1799 (1 Stat. 646), and the eighth section of the act of July 28, 1866 (14 Stat. 180), is a civil case of admiralty and maritime jurisdiction, within the jurisdiction of the court, because the subject-matter is maritime in its nature. *The Steamer Missouri*, 3 Ben. 508.

55. (June, 1870.) An information was filed against the steamship *Queen* and her master, alleging that the vessel belonged, in whole or in part, to a citizen or citizens of the United States and charging that certain merchandise not included in the manifest on board, had been imported by her into the United States, contrary to sec. 24 of the act of March 2, 1799, which, for such offense, imposes upon the master a forfeiture equal to the value of the goods not included in the manifest, and that by sec. 8 of the act of July 18, 1866, the vessel is holden for the payment of the penalty against the master, and becomes liable to be seized and proceeded against by libel, to recover the same, in this court. The answer of the owners of the vessel denied the allegations of the information, and especially that they were citizens of or residents in the United States, and excepted to the information as alleging no cause of action against the vessel, inasmuch as it did not show that the master or owners of the vessel had been convicted of the acts complained of. The answer of the master also denied the statements of the information and excepted to it, in that it did not set forth a joint cause of action against the vessel and the master, and in that parties were improperly joined, and in that the parties joined were entitled to different modes of trial, and in that this action could not be sustained against the vessel and the master jointly. This suit, as to both vessel and master, was tried before the court without a jury, as a civil cause of admiralty and maritime jurisdiction.

Held, that the vessel was a British vessel, and that, as, under the law, it is immaterial whether the offending vessel is a vessel of the United States or a foreign vessel, the information might be amended without terms, in respect to the ownership of the vessel, and by averring a violation of section 25 of the act of 1866, which extends the provisions of the act of 1799 to vessels owned, in whole or in part, by foreigners;

That the court had jurisdiction to enforce the penalty against the vessel, in such a proceeding as this, without a trial by jury;

That the vessel might be proceeded against for the penalty, irrespective of any proceedings against the master;

That the suit to recover the penalty against the master was a suit at common law, and he was entitled to a trial by jury, under the seventh amendment of the Constitution of the United States. *United States v. Steamship Queen & her Master*, 4 Ben. 237.

56. (June, 1871.) Where a penalty is given by statute, and no remedy for its recovery is expressly given, debt will lie. *United States v. Willetts*, 5 Ben. 221.

57. (May, 1873.) Where a statute of the United States gives a penalty, and no particular remedy is prescribed for enforcing it, an action of debt may be brought to recover it, and the debt arises when the penalty is incurred. *Matter of Rosey*, 6 Ben. 507.

58. (Feb., 1878.) The subject matter of a proceeding against a vessel to recover the penalty, \$500, is the enforcement of a navigation law against a vessel employed on navigable waters of the United States, and the District Court takes jurisdiction of the case because it is, by reason of the subject-matter, "a civil case of admiralty and maritime jurisdiction," and not because it is a case of "seizure on land or on waters not within the admiralty and maritime jurisdiction of the United States" (Rev. Stat. sec. 563, subd. 8). The absence of a seizure therefore does not affect the jurisdiction of the court. *The Steamboat Joshua Leveness*, 9 Ben. 339.

59. (Feb., 1840.) Where, in a suit for the forfeiture of goods under the revenue laws, sufficient evidence has been given for the prosecution to satisfy the court that there was probable cause for the proceeding, the burden of proof is thrown upon the claimants. *United States v. 25 Cases of Cloths, &c.*, Crabbe, 357.

COMMON-LAW JURISDICTION.

Suits at Common Law by United States or Officers.

Fourth. Of all suits at common law brought by the United States, or any officer thereof, authorized by law to sue.

24 Sept. 1789, c. 20, s. 9, v. 1, p. 76.

3 March, 1815, c. 101, s. 4, v. 3, p. 245.

1. (Dec., 1851.) The act of June 17, 1844 (5 Stat. at Large, 676), reviving the act of 1824, gives jurisdiction to the District Courts, in cases only where the title set up to lands, under grants from former governments, is equitable and inchoate, and where there is no grant purporting to convey a legal title. *United States v. McCullagh*, 13 How. 216.

2. Grants from the British government, as well as those of France and Spain, are equally within this restriction. *Ib.*

3. (Oct., 1878.) The eleventh section of the act [of June 22, 1860 (12 Stat. 85)], authorizes the claimants in a defined and limited class of cases to sue by petition in the District Court of the United States within whose jurisdiction the land is situate. *Scully v. United States*, 8 Otto, 410.

4. (Oct., 1827.) The United States may sue in the District Court, as indorsees of a promissory note, against the maker thereof, although the maker and payee were citizens of the same State, the restriction contained in the eleventh section of the Judiciary Act of 1789, ch. 20, not being intended to apply to suits brought by the United States, or, if so intended, being repealed by the act of 1815, ch. 253. *United States v. Green*, 4 Mason, 427.

5. (Oct., 1854.) By the ninth section of the Judiciary Act of 1789, the District Courts have cognizance of all suits at common law, where the United States sue, and the matter in dispute amounts to one hundred dollars, exclusive of costs. *United States v. Bougher*, 6 McLean, 277.

6. (July, 1868.) When the District Court [in California] under the act of June 14, 1860 (12 Stat. 33), had ordered a sur-

vey of a confirmed claim to land under a Mexican grant, into court for examination, its jurisdiction over it continued, and over any new survey directed by it, until the survey of the claim was finally disposed of, notwithstanding the passage of the act of July 1, 1864 (13 Stat. 332). *United States v. Castro*, 5 Sawyer, 626.

7. (March, 1868.) A receiver of a national bank, appointed under the thirty-first section of the National Banking Act (13 Stat. 99), is an officer of the United States.

This court, therefore, has jurisdiction of an action at common law, brought by such receiver (Act of March 3, 1815, sec. 4), to collect a claim which was due to the bank at the time of his appointment. *Platt v. Beach*, 2 Ben. 303.

Declaration.

1. (Oct., 1812.) If a declaration on a penal statute do not conclude "against the form of the statute," it is a fatal omission or error. Alleging "whereby, and by force of such act," the defendant had forfeited, &c., is not sufficient. *Sears v. United States*, 1 Gall. 257.

2. If several acts are mentioned in such a declaration, and it be alleged that "by force of said act," without designating the particular act, the forfeiture hath accrued, &c., it seems that it is not fatal on error. *Ib.*

3. It seems, also, that such a declaration need not specify the uses to which the forfeiture enures; and if it allege it to be "to the uses expressed in said statute," where several statutes have been before mentioned, and no one of them is the statute which expresses such uses, it is not fatal on error. *Ib.*

4. (Oct., 1812.) A conclusion of a declaration of debt for a penalty, under a statute, "against the law in such case made and provided," is not a conclusion against the form of a statute; and is bad on error. *Smith v. United States*, 1 Gall. 261.

5. If two penal offenses are described in one count, and one penalty only sought, after verdict, the declaration will be supported. *Ib.*

6. In debt for the penalty of the double value, under the Embargo Act of Jan. 9, 1808, ch. 8, s. 3, it need not be

averred in the declaration that the vessel and cargo had not been and could not be seized for the offense. *Ib.*

7. (Oct., 1812.) If a declaration for a statute penalty conclude "against the form of the *statutes*," when it is founded on a single statute, it is good, on error. *Kenrick v. United States*, 1 Gall. 268.

8. (Nov., 1821.) An action of debt founded upon an act of Congress is brought to recover a penalty, in which the declaration charges that the defendant "did forcibly rescue, *or cause to be rescued*, from the said collector, *or one of them*, the said spirits," &c., adopting the phraseology of the act. *Held*, that although the offense might have been stated with more precision, and, although the declaration might have been held ill on special demurrer, yet it is a defect of form merely, which, after judgment, is cured by the statute of jeofails. *Jacob v. United States*, 1 Brock. 520.

9. (1874.) In a proceeding upon a recognizance by declaration instead of *scire facias*, it is not necessary, where the officer taking it has jurisdiction over cases of the general description named in the recognizance, to aver the existence of the particular facts which establish that the officer had authority to take it. Following *People v. Kane*, 4 Denio, 530, and *State v. Grant*, 10 Minn. 39. *United States v. George*, 3 Dill. 431.

10. (June, 1869.) In an action for a penalty given by statute, the complaint must state that the act or omission by which the penalty was incurred, was done or omitted contrary to the statute. *Briscoe v. Hinman*, Deady, 588.

11. In an action for a penalty by a private person, the complaint must allege the right of the plaintiff to sue therefor. *Ib.*

12. In an action against a collector of customs for the penalty given by sec. 24 of the Steamboat Act of 1852 (10 Stat. 71), it must appear from the complaint, with reasonable certainty as to time and place, that the vessel was engaged in carrying passengers while navigating the waters of the United States. *Ib.*

13. The allegations, that a vessel was engaged in carrying passengers between Jan. 1st and May 1, 1868, and that on certain trips such vessel carried goods *or* passengers, are bad for uncertainty. *Ib.*

14. (July, 1870.) Where the plaintiff in an action under the act of May 31, 1870 (16 Stat. 140), for damages for preventing

him from voting, alleges in the same count or cause of action that defendant prevented plaintiff from voting for several different officers, and that he refused his vote, refused to swear him as to his qualifications, &c., his pleading is bad for duplicity, upon special demurrer or motion to strike out. These different acts are distinct causes of action, under the statute, and should be alleged in separate counts or statements. *McKay v. Campbell*, 2 Abb. U. S. 120.

15. But as the objection could only be taken, at common law, by special demurrer, it must be taken, under a reformed code which substitutes a motion to strike out for the special demurrer, — such as the Oregon Code of Procedure, — by such motion, and not by demurrer. *Ib.*

16. In order to sustain an action under the statute (Act of May 31, 1870, 16 Stat. 140) for refusing to swear the plaintiff in order to enable him to prove his qualifications as an elector, as prescribed by the state law, the evidence upon the trial must show that the reason for the defendant's alleged refusal was on account of the race, color, or previous condition of servitude of the plaintiff. Hence, this fact must be alleged in the complaint. *Ib.*

17. (June, 1838.) In an action or information to recover a fine or penalty under a statute, the declaration must conclude "against the form of the statute," or by words of equivalent import. *United States v. Babson*, 1 Ware, 462.

18. It is sufficient if the conclusion is, "contrary to the act of Congress in such case made and provided." *Ib.*

19. (Nov., 1829.) Where a plaintiff declares against one obligor alone, as jointly and severally bound, and the defendant pleads *non est factum*, a joint bond of the defendant and another person is not evidence, though it agrees in date and amount with that described in the declaration. *Postmaster General v. Ridgway*, Gilp. 135.

Amendment of Declaration.

1. (Sept., 1825.) Such defects [in substance] may be amended in the District Court, on terms. This power is more extensive than any given to the English Courts. *Smith v. Jackson*, 1 Paine, 486.

2. But the amendments must be made before final judgment. And this is agreeable to the state practice in such cases. *Ib.*

3. Amendments at common law were for trivial errors, and where there was something to amend by. Anciently they could be made only during the term when the error occurred in the record; afterwards they were allowed at any time pending the suit, but never after final judgment. *Ib.*

4. Confusion and contradiction in the English cases, arising upon the various statutes of amendments and jeofails. *Ib.*

5. A judgment was entered in the District Court of the Northern District of New York, sitting with Circuit Court powers, in January, 1824, the record filed, and execution issued. In September of the same year the case was removed by error into the Circuit Court; and in January following, the District Court allowed the record to be amended by inserting in the declaration the averments of citizenship and of the value of the property in dispute, which was essential to jurisdiction. *Held*, that the amendments were irregular; and that this court would not receive them after the original record had been sent up. *Ib.*

6. (1874.) Leave by the trial court to the plaintiff to amend his declaration, upon a forfeited recognizance given in a criminal proceeding, held not to be erroneous. *United States v. George*, 3 Dill. 431.

7. (Nov., 1829.) An amendment of the declaration, offered after the jury is sworn, and introducing a new cause of action, cannot be allowed. *Postmaster General v. Ridgway*, Gilp. 135.

8. In an action of debt against one obligor, a declaration setting forth a joint and several bond cannot be amended by adding a new count setting forth a joint bond of the defendant and another person. *Ib.*

Pleadings. Common Law.

1. (May, 1813.) No averment is admissible to contradict the terms of a written instrument. *United States v. Thompson*, 1 Gall. 388.

2. (March, 1868.) Where a suit at common law was brought against the defendant, a foreign consul, the declaration being in debt on a bond for \$40,000 executed by the defendant to the plaintiff, Sept. 30, 1851; and the defendant's plea set up that the bond was secured by a mortgage on lands in Virginia, conditioned that, if the bond were not paid, the plaintiff might

enter into the lands and sell them, and retain his debt out of the proceeds, and that on April 6, 1858, after the debt became due, the plaintiff did enter on the lands, they exceeding in value the amount of the debt, to sell and dispose of them, and that he might have sold and disposed of them, and paid his debt, but, instead of so doing, he had remained in possession, whereby the debt was paid and satisfied; and the plaintiff replied to the plea, setting up that the defendant, on July 4, 1855, filed a bill in chancery in a state court in Virginia against the Buckingham Gold Company, alleging that he, as owner of the lands subject to the mortgage, had contracted to sell the lands to them, and they had taken possession, but had not paid the price, and praying a sale of the lands by decree of the court, and afterwards filed a supplemental bill against the plaintiff, praying that he might be made a party, and that afterwards, in June, 1857, after default in the payment of the mortgage, the plaintiff filed a bill in the nature of a cross-bill in chancery, in the same court, against the defendant and others, for the purpose of selling the premises to pay the debt, and the defendant appeared and answered the bill, and afterwards the bills came on to be heard together, and the court made a decree of sale, under which the lands were sold to the plaintiff, leaving a deficiency of \$18,399, and that the plaintiff's entry into the land was under that sale, and not otherwise; and the defendant rejoined, (1) that the court in Virginia had no jurisdiction of the cause, inasmuch as the defendant was a foreign consul; and (2) that the plaintiff's bill in that court was not a cross-bill; and the plaintiff demurred to the rejoinder, —

Held, that the courts of a state have no jurisdiction of suits against foreign consuls, but have jurisdiction of suits brought by them.

That the court of Virginia had jurisdiction of the suit brought by the defendant; but that the suit brought there by the plaintiff was not a part of the defendant's suit, but was an original suit, and therefore not within the jurisdiction of that court.

That the first rejoinder was therefore good.

That the second rejoinder was bad, it averring that the bill of the plaintiff was not a cross-bill, whereas the replication averred that the bill was in the nature of a cross-bill.

That a strict foreclosure of a mortgage is a payment of the

debt, but the entry alleged in the defendant's plea was not a strict foreclosure, but an entry to sell and pay the plaintiff's debt; and such an entry was no defense to the bond.

That the defendant's plea was therefore bad; and that, although the plaintiff had replied to it, the defect was not cured thereby, and the plaintiff was therefore entitled to judgment. *Sagory v. Wissman*, 2 Ben. 240.

Plea. Common Law.

1. (Feb., 1810.) To an action of debt for the penalty of an embargo bond, it is a good plea, under the act of Congress of the 12th of March, 1808, s. 3, that the party was prevented from relanding the goods in the United States, by *unavoidable accident*. *Durousseau v. United States*, 6 Cranch, 307.

2. (Feb., 1818.) If a suit be brought against the seizing officer for the supposed trespass, while the suit for the forfeiture is depending, the fact of such pendency may be pleaded in abatement, or a temporary bar to the action. If after a decree of condemnation, then that fact may be pleaded as a bar; if after an acquittal, with a certificate of reasonable cause of seizure, then that may be pleaded as a bar. *Gelston v. Hoyt*, 3 Wheat. 247.

3. If to an action of trespass in a state court for a seizure, the seizing officer plead the fact of forfeiture in his defense, without averring a *lis pendens*, or a condemnation, or an acquittal with a certificate of reasonable cause of seizure, the plea is bad; for it attempts to put in issue the question of forfeiture in a state court. *Id.*

4. The statute of 1794, ch. 50, s. 3, prohibiting the fitting out any ship, &c., for the service of any foreign prince or state, to cruise against the subjects, &c., of any other foreign prince or state, does not apply to any new government, unless it has been acknowledged by the United States, or by the government of the country to which such new state belonged. And a plea, which sets up a forfeiture under that act, in fitting out a ship to cruise against such new state, must aver such recognition, or it is bad. *Id.*

5. A plea, justifying a seizure under this statute, need not

state the particular prince or state by name, against whom the ship was intended to cruise. *Ib.*

6. A plea justifying a seizure and detention by virtue of the seventh section of the act of 1794, under the express instructions of the President, must aver that the naval or military force of the United States was employed for that purpose, and that the seizor belonged to the force so employed. *Ib.*

7. To trespass for taking and detaining and converting property, it is sufficient to plead a justification of the taking and detention; and if the plaintiff relies on the conversion, he should reply it by way of new assignment. *Ib.*

8. A plea alleging a seizure for a forfeiture as a justification, should not only state the facts relied on to establish the forfeiture, but aver that thereby the property became, and was actually, forfeited, and was seized as forfeited. *Ib.*

9. (Jan., 1833.) After issue joined in the District Court, the defendants filed a plea that the firm of Theodore Nicolet and Company, the plaintiff, consisted of other persons in addition to those named in the writ and petition, and that those other persons were citizens of Louisiana. The court, after receiving the plea, directed that it be taken from the files of the court. *Held*, that this was a proceeding in the discretion of the court; and was not assignable as error in this court. *Breedlove v. Nicolet*, 7 Pet. 413.

10. The plea was offered after issue was joined on a plea in bar, and the argument of the cause had commenced. The court might admit it; and the court might also reject it. It was in the discretion of the court to allow or refuse this additional plea. As it did not go into the merits of the case, the court would undoubtedly have acted right in rejecting it. *Ib.*

11. (Jan., 1839.) In the District Court of Louisiana, the defendant pleaded the plea of reconvention, which is authorized by the code of practice of Louisiana. The District Court, on the motion of the plaintiffs, ordered the plea to be stricken off. The code of practice of Louisiana was adopted in Louisiana by a statute of that state, passed after the act of Congress of the 26th of May, 1824, regulating the practice of the District Court of the United States for the Eastern District of Louisiana; and the practice according to that code had not been adopted as part of the rules of practice of the District Court when the plea was

stricken off. *Held*, that the plea was properly stricken out. *Wilcox v. Hunt*, 13 Pet. 378.

12. (Dec., 1852.) It is a bad mode of pleading to unite pleas in abatement and pleas to the merits. And if, after pleas in abatement, a defense be interposed, going to the merits of the controversy, the grounds alleged in abatement become thereby immaterial and are waived. *Sheppard v. Graves*, 14 How. 505.

13. (Dec., 1860.) The laws of Mississippi provide that, where a case is carried up to an appellate court, and the defendant in error is a non-resident and has no attorney of record within the state, notice shall be given by publication in a newspaper of the pendency of said cause, which the appellate court shall then proceed to hear and determine.

These directions having been complied with, the jurisdiction of the appellate court was complete; and the plea, in Texas, of *nul tiel record*, properly overruled. *Nations v. Johnson*, 24 How. 195.

14. The American and English cases upon this point examined. *Ib.*

15. (Dec., 1866.) Where a plea in answer is but notice of special matter by way of abatement of the amount claimed, and so goes to but a part of the cause of action, it cannot be relied on as a plea in bar. *United States v. Dashiell*, 4 Wall. 182.

16. (May, 1812.) If a plea of performance be too narrow, or contain a flat negative pregnant, it is bad. *United States v. Sawyer*, 1 Gall. 86.

17. A plea seeking to avoid a bond for being illegally taken, *colore officii*, should specially state all the facts which show that illegality. *Ib.*

18. (Nov., 1812.) I have no difficulty in deciding that the plea is bad in substance. It admits the cause of action, and does not avoid it; and it is quite impossible to contend that it can be a good bar, when, from the defendants' own showing, the bond has not been satisfied or discharged. If a single dollar only were due and unpaid to the United States, the bar would be insufficient. *United States v. Arnold*, 1 Gall. 348, 355.

19. (May, 1815.) Where the subject-matter is not within the jurisdiction of the court, the exception may be taken under the general issue. *Maisonnaire v. Keating*, 2 Gall. 345.

20. (Jan., 1876.) It is a good plea, that, since the commencement of a suit, judgment was recovered between the same parties,

in another federal court, upon the same cause of action. It is immaterial which suit was first commenced. *United States v. Dewey*, 6 Biss. 501.

21. (March, 1870.) A plea false upon its face may be stricken out, but this falsity cannot be shown by comparing it with another plea or defense in the same answer. *Bachman v. Everding & Beebe*, 1 Sawyer, 70.

22. A plea which expressly or in effect admits the plaintiff's cause of action cannot be stricken out as frivolous. *Ib.*

23. A motion to strike out is not allowed, if matter properly pleaded is included in it. *Ib.*

24. A defendant may plead separately as many distinct defenses as he may have, and one cannot be taken to help or destroy the other. *Ib.*

25. (April, 1877.) A plea in abatement pleaded with matter to the merits is considered waived or abandoned. *Dowell v. Cardwell*, 4 Sawyer, 217.

26. (April, 1868.) The defendant, in an information to enforce a forfeiture under the internal revenue laws, may take advantage of the fact that the prosecution was not instituted within the time limited by law for commencing it, under the general issue. He is not required to plead specially. *United States v. 6 Fermenting Tubs*, 1 Abb. U. S. 268.

27. (June, 1845.) A former judgment is not pleaded with a profert, but a profert is tendered in reply to the plea or replication of *nul tiel record*. *Burnham v. Webster*, 2 Ware, 240.

28. A plea of a foreign judgment must contain an allegation that the court had jurisdiction, or so much of the proceedings must be spread on the record as will show affirmatively that the court had jurisdiction. *Ib.*

29. A foreign judgment is not considered a record, and a plea to such judgment of *nul tiel record* is bad. The opposite party may treat the plea as a nullity and take judgment. *Ib.*

30. (Oct., 1872.) To an action of debt on the bond given by a collector of internal revenue against such collector and his sureties, the defendants joined in pleading *non est factum*. *Held*, that under such a plea the defendants must sustain it as to all or fail as to all. *United States v. Halsted et al.*, 6 Ben. 205.

31. (Feb., 1829.) In a suit of the United States against the administratrix of a surety on a revenue bond, brought thirteen

years after the breach, and twelve years after she had settled her administration account, without having had previous notice of the bond or forfeiture, she was held to be entitled to judgment, on pleading want of assets and fully administered. *United States v. Primrose*, Gilp. 58.

32. (Feb., 1836.) Where a separate judgment has been rendered against one obligor on a joint and several obligation, and a *scire facias* is issued to revive the judgment, the defendant cannot avail himself of a release given to his co-obligor subsequent to the original judgment. *United States v. Thompson*, Gilp. 614.

33. Where a *scire facias* is issued to revive a judgment, the defendant cannot avail himself of matters of defense which occurred previous to the original judgment. *Ib.*

34. Where a joint judgment is rendered against two obligors in favor of the United States, and one of them is subsequently released under the provisions of the act of March 2, 1831, such release is a sufficient defense, under a plea of payment, to a *scire facias* issued to revive the judgment against the other obligor. *Ib.*

35. Where judgment has been rendered against a defendant, who has subsequently conveyed real estate to the plaintiff, he is entitled, under a plea of payment to a *scire facias* issued to revive the original judgment, to a credit for the value of the property at the date of the conveyance. *Ib.*

36. (May, 1868.) Proceedings under the acts of Congress for the confiscation of property, on account of acts done or permitted in aid of the late rebellion, are not admiralty cases, although the statute requires such proceedings to conform, as near as may be, to the forms and modes of proceeding in admiralty. They are common-law cases in their essence, like revenue seizures on land; and the mode of bringing such cases into a revisory court is by writ of error. *Brown v. United States*, McCahon, 229.

37. A person who accepts and complies with the conditions of a pardon granted by the President of the United States, for acts done or permitted in aid of the late rebellion, may plead such pardon in proceedings for the confiscation of his property. *Ib.*

38. Until an order of distribution is made, of proceeds of property sold, or until the money is actually paid into the hands of the party entitled to receive it as informer, or into the Treasury of the United States, it is within the control of the court, and

no vested right to it has accrued so as to prevent the pardon from restoring it to the petitioner. *Id.*

Replication. Common Law.

1. (June, 1845.) A replication which alleges two distinct and independent facts, either of which is a complete answer to the plea, is double, and is bad on special demurrer. *Burnham v. Webster*, 2 Ware, 240.

Demurrer. Common Law.

1. (Dec., 1875.) To a claim to recover a tax due under the internal revenue law, on an allegation that a less tax than was due had been paid, the defense was interposed that the amount paid was determined to be the true amount by the assessor of internal revenue, and to this defense a demurrer was interposed. *Held*, that the defense was one which would more properly be passed on at the trial, and that the demurrer must be overruled. *United States v. The New York Guaranty and Indemnity Co.*, 8 Ben. 269.

2. (Dec., 1875.) A stockholder of a national bank demurred to a complaint of the receiver of the bank, who had sued to recover the amount of an assessment laid by the Comptroller of the Currency upon the stockholders, to wind up the affairs of the bank, alleging as a ground of demurrer that the complaint did not show that the assessment was needed by the receiver.

Held, that the decision of the United States Supreme Court upon this point, in the case of *Kennedy v. Gibson* (18 Wall. 498), that, as to the necessity of an assessment and its amount, "the determination of the Comptroller is conclusive," was not *obiter dictum*, and therefore must control in this case, and the demurrer must be overruled. *Strong v. Southworth*, 8 Ben. 331.

Demurrer to Evidence.

1. (Feb., 1830.) In a demurrer to evidence, the party who demurs is held to admit every fact which a jury, in the exercise of a fair and reasonable discretion, could infer from the evidence; but he is not bound to admit forced and violent inferences. *United States v. Williams*, 1 Ware, 173.

Affidavit for Order of Arrest.

1. (July, 1867.) A statute providing in general terms that an order of arrest may be issued whenever certain facts appear by affidavit, is satisfied if the requisite facts appear by a fully verified complaint, and this complaint is laid before the court on applying for the order of arrest. *United States v. Walsh*, 1 Abb. U. S. 66.

Argument.

1. (May, 1833.) The bill of complaint of a debtor, against whom a warrant of distress has been issued under the provisions of the act of May 15, 1820, is in the nature of a motion to stay execution on a judgment, and the beginning and conclusion of the argument are with the debtor. *Armstrong v. United States*, Gilp. 399.

2. (Feb., 1837.) Where a defendant has pleaded payment, and, at the trial, adopts such a course as to throw the whole affirmative proof on the plaintiff, the plaintiff has the right to reply. *United States v. Ingersoll*, Crabbe, 135.

Bill of Particulars.

1. (July, 1877.) Where an information on behalf of the United States had been filed, for violation of the internal revenue law, as to entries upon the books, and other offenses, and a quantity of corn, spirits, and other property had been seized, — *Held*, that the information filed being vague, the claimant of the property was entitled to a bill of particulars. *United States v. 200 Bushels of Corn, &c.*, 9 Ben. 186.

2. (Sept., 1879.) The United States brought suit for an unpaid balance of income tax alleged to be due from the defendant during a period of ten years. Among other defenses, it was denied that the defendant's taxable income exceeded the sums on which he had paid the tax. The defendant moved for a bill of particulars, making affidavit that "he in good faith intends to defend the action, and that he is ignorant of the particulars of the claim made against him, and that it is necessary and material to his defense that he shall have rendered to him a bill of the par-

ticulars thereof, as he is advised by his counsel and verily believes ;” and the district attorney made affidavit that “it is not in his power, and, to the best of his knowledge and belief, not in the power of the plaintiff, to state all the items or particulars which have to be considered in determining what defendant’s taxable income was.” *Held*, that the case was not a proper one in which to order a bill of particulars. *United States v. Tilden*, 10 Ben. 547.

3. The granting or refusing a bill of particulars is a matter in the discretion of the court, under the circumstances of the particular case. *Ib.*

4. In general, such a bill is not ordered where the matters of which information is thus sought are peculiarly within the knowledge of the defendant or more within the defendant’s than the plaintiff’s knowledge, or where, from the nature of the case, the plaintiff cannot be reasonably expected to be able to give the items of his claim with certainty. *Ib.*

5. Whether a delay from April, 1878, when the demurrer in some parts of the answer was finally disposed of, till September, 1879, when this motion was made, would be fatal to the application for a bill of particulars, if the defendant were otherwise entitled to it, or whether such application should be denied because at an intervening term of the court the defendant’s counsel had announced that they were ready and desirous to go to trial, *quære*. *Ib.*

Certificate of Probable Cause.

1. (Sept., 1871.) Property was seized by a collector of internal revenue, on Sept. 26, 1867, and was next day released to the claimant on a bond given under the 48th sec. of the Internal Revenue Act of June 30, 1864 (13 Stat. 238). On Oct. 10, 1867, an information was filed against the property. On October 22, the collector made a new seizure of such of the property first seized as could be found in the possession of the claimant. No information was filed on that seizure. The Circuit Court, on a writ of error, decided that the first seizure was abandoned, and the claimant was entitled to judgment. The collector then applied to this court for a certificate of probable cause.

Held, that the application must be denied for want of jurisdiction. *Ninety-Two Barrels of Rectified Spirits*, 5 Ben. 323.

2. (Feb., 1859.) A motion for a certificate of probable cause of seizure may be made subsequent to the decree, and upon the hearing of such motion the court is not limited to the evidence introduced upon the trial, but may receive any evidence tending to show that the collector acted upon a reasonable suspicion. *The Gala Plaid*, 1 Brown, 1.

3. In determining the question, the court is not at liberty to consider the fact that the seizure was made at night, without proper warrant, and that the conduct of the officer was otherwise oppressive and cruel, as his certificate would not protect him in an action for a personal trespass. The court can only consider whether his action was malicious and groundless, or whether he acted upon a reasonable suspicion that the goods were smuggled. *Ib.*

4. The fact that the claimant was selling them at a low price in an obscure town, declaring them to have been imported, and that duty had been paid upon only a small portion, was held sufficient to justify their seizure. *Ib.*

Certiorari from Circuit Court.

1. (Feb., 1817.) A Circuit Court has no authority to issue a *certiorari*, or other compulsory process, to the District Court, for the removal of a cause from that jurisdiction, before a final judgment or decree is pronounced. *Patterson v. United States*, 2 Wheat. 222.

2. In such a case, the District Court may and ought to refuse obedience to the process of the Circuit Court, and either party may move the Circuit Court for a *procedendo* after the transcript of the record is removed into that court, or may pursue the cause in the District Court as if it had not been removed. *Ib.*

3. But if the party, instead of properly taking advantage of the irregularity in the proceedings, enters his appearance in the Circuit Court, takes defense, and pleads to issue, it is too late, after verdict, to object to the irregularity; and the Supreme Court will, on error, consider the cause as an original suit in the Circuit Court. *Ib.*

Deposition.

1. (Oct., 1873.) A notice without date, given to a party, that depositions will be taken "on the 12th of September" (no year mentioned), at the office of a person named, "in the *city* of Guilford, State of Maine," is insufficient to let in a deposition taken on the 12th of September, 1867, "in the *town* of Guilford;" it not appearing whether the town or township of Guilford was the same as the city of Guilford; and the opposite party not having attended at the taking of the depositions, and so waived the defect in the notice. *Knode v. Williamson*, 17 Wall. 587.

2. (1870.) Under the circumstances stated in the opinion, it was held that the District Court did not err in allowing a deposition taken and filed by one party to be read in evidence by the other. *Andrews v. Graves*, 1 Dill. 108.

Exceptions.

1. (April, 1870.) It was *held* that shingles described in the warrant as the "growth and manufacture" of the provinces of Canada were so described as to make their importation without payment of duty a fraud on the revenue. *Stockwell v. United States*, 3 Cliff. 285.

2. It is a defect in the warrant not to allege that the district judge became satisfied, by complaint and affidavit, that the alleged frauds on the revenue had been committed. This, however, could not avail the defendants in this case, — (1) because they did not at the trial except to the ruling of the court, admitting books, documents, &c., upon that ground; (2) because the books, &c., were properly admitted, even if the search warrant were illegal. *Ib.*

3. Exceptions to the ruling of a court, in admitting evidence, should be sufficiently specific to enable it to understand the precise ground upon which the objection is based. *Ib.*

4. It was objected that the books, &c., were not in themselves legal evidence. *Held*, that as the same were not set forth in the bill of exceptions, nor in any way made part of it, the presumption was that the ruling of the district judge was correct, and the point was not open for examination. *Ib.*

Execution. Venditioni Exponas.

1. (Jan., 1842.) Whatever may be the defects or illegality of the final process, no error can be assigned in the Supreme Court, on a writ of error for that cause. The remedy, according to the modern practice, is by motion in the court below, to quash the execution. *Amis v. Smith*, 16 Pet. 303.

2. The provisions of the third section of the Act of Congress of May 19, 1828, adopted the forthcoming bond in Mississippi as a part of the final process of that State at the time of the passage of the act. "A final process" is understood by the court to be all the writs of execution then in use in the State courts of Mississippi, which were properly applicable to the courts of the United States; and the phrase, "the proceedings thereupon," is understood to mean the exercise of all the duties of the ministerial officers of the State, prescribed by the laws of the State, for the purpose of obtaining the fruits of judgments; among those are the provisions of the laws relating to forthcoming bonds, which must be regarded as part of the final process. *Ib.*

3. The proceeding which produced the forthcoming bond was purely ministerial; the judicial mind was in no way employed in its production. It does not then possess the attributes of a judgment; and ought therefore to be treated in this court as final process, or, at least, as part of the final process. *Ib.*

4. No rule under the third section of the act of 1828, which authorizes the courts of the United States to alter final process so as to conform it to any changes which may be adopted by State legislation and State adjudications made by a district judge, will be recognized by the Supreme Court as binding, except those made by the District Courts exercising Circuit Court powers. *Ib.*

5. (Jan., 1843.) If an execution be issued before the proper parties are thus made, it is unauthorized and void, and no right of property will pass by a sale under it. *Taylor v. Savage*, 1 How. 282.

6. (Jan., 1846.) In cases of conflicting executions issued out of the federal and state courts, a priority is given to that under

which there is an actual seizure of the property first. *Brown v. Clarke*, 4 How. 4.

7. (Dec., 1866.) A writ of *feri facias*, tested and issued after the death of the party against whom the judgment is recovered, is void, and confers no power on the ministerial officer to execute it. *Mitchell v. St. Maxent*, 4 Wall. 237.

8. The rule applies where the proceedings are commenced by seizing property, under a writ of attachment, under the laws of Florida, as at the common law. *Id.*

9. (Nov., 1871.) Under the act of March 3, 1821 (3 Stat. 643), the deputy clerk of the United States District Court for Louisiana was authorized to sign process in his own name as such deputy, and a *venditioni exponas* so signed and in other respects regular, and under the seal of the court, is valid. *Bragg v. Lorio*, 1 Woods, 209.

10. (July, 1843.) A writ of *venditioni exponas* issued before the expiration of the year is irregular, and will be quashed on motion, and a *supersedeas* thereto ordered. *United States v. Conway*, Hempst. 313.

Finding. Verdict.

1. (Feb., 1817.) A verdict is bad if it varies from the issue in a substantial matter, or if it find only a part of that which is in issue; and, though the court may give form to a general finding, so as to harmonize with the issue, yet, if it appears that the finding is different from the issue, or is confined to a part only of the matter in issue, no judgment can be rendered upon the verdict. *Patterson v. United States*, 2 Wheat. 221.

2. (Dec., 1852.) A verdict on an issue to try whether a sale was fraudulent, finding the same to be fraudulent, will not be set aside on a certificate or affidavit of some of the jurors, afterwards made, as to what they meant. *Doss v. Tyack*, 14 How. 298.

3. (May, 1881.) In a suit at law brought in the District Court by a national bank against a town, to recover the amount of sundry coupons on bonds issued by the town in aid of a railroad company, a trial by jury was waived in writing, and the suit, under a written agreement, was tried by the district judge, without a jury. After a finding and a judgment for the plaintiff, a bill of exceptions was signed, and the defendant sued out a writ

of error. *Held*, that no questions arising on the bill of exceptions could be considered by the Circuit Court on the writ of error, because the facts were found by the District Court without a jury. *Town of Lyons v. Lyons National Bank*, 19 Blatchf. 279.

Habeas Corpus.

1. (Dec., 1867.) Where it appears by the return to a writ of *habeas corpus* issued by a state tribunal, that the respondent holds the petitioner under authority or color of authority from the United States, the state tribunal or officer has no jurisdiction to proceed further, but must discharge the writ. *Matter of Farrand*, 1 Abb. U. S. 140.

2. The question whether such authority is valid cannot be examined in a state court, but is within the exclusive jurisdiction of the tribunals of the United States. *Ib.*

3. A commander in the army of the United States made return to a writ of *habeas corpus* issued by a state court, showing that he held the petitioner as a recruit in the army, and pursuant to laws of the United States regulating enlistments. The state court examined the validity of the enlistment, determined it to be invalid, and directed the recruit to be discharged. The officer refused to discharge him, and the state court committed the officer for contempt. *Held*, by the District Court of the United States for the District of Kentucky, on a *habeas corpus* sued out by the commander, that the state court exceeded its jurisdiction in examining the validity of the enlistment; that it had no power to proceed beyond ascertaining that the officer held the recruit by color of authority from the United States; and that the officer, in detaining the recruit notwithstanding the order of discharge by the state court, acted in pursuance of a law of the United States, and, being imprisoned therefor by the state court, was himself entitled to be discharged by virtue of the act of March 2, 1833. *Ib.*

4. (1864.) The authority given to judges of the United States courts, by sec. 14 of the act of Sept. 24, 1789 (1 Stat. 81), to grant writs of *habeas corpus*, extends to cases where a prisoner is in custody under a valid conviction and sentence, but claims release upon the ground of a pardon. *Greathouse's Case*, 2 Abb. U. S. 382.

5. (April, 1843.) By the Judiciary Act of 1789, the courts and judges of the United States are expressly authorized to issue writs of *habeas corpus*; and reference must be made to the common law to ascertain the nature of that writ. *Matter of Keeler*, Hempst. 306.

6. Applications of this nature must be supported by oath, taken before some competent officer of whom judicial notice will be taken, or who is shown to be such by proper evidence. *Ib.*

7. The writ will not be granted where the application is sworn to before a justice of the peace of another state, and there is no evidence of the official character of such justice. *Ib.*

8. (Oct., 1867.) Sec. 14 of the Judiciary Act (1 Stat. 81), which authorizes the courts of the United States to issue writs of *habeas corpus*, is not restrained in its operation by the proviso thereto, except in the case of prisoners in jail under or by color of the authority of a state of the United States, in which case the writ can only issue to bring the prisoner into court to testify. *Bennett v. Bennett*, Deady, 300.

9. According "to the usages and principles of law," mentioned in sec. 14 of the Judiciary Act, the power thereby given to the District Court to issue writs of *habeas corpus* may be exercised by the judge thereof at chambers. *Ib.*

10. (April, 1846.) Whether a judge of a court of the United States can exercise the power of issuing writs of *habeas corpus ad testificandum* in vacation, even for the purpose of bringing witnesses into court at the approaching session, *quære*. *Ex parte Barnes*, 1 Sprague, 133.

11. (Sept., 1863.) What is meant by "the privilege of the writ of *habeas corpus*:" *In re Fagan*, 2 Sprague, 91.

12. Suspension of the privilege of the writ practically distinguished from the prohibition of the issue of the writ and other preliminary intermediate proceedings. *Ib.*

13. The intent of the proclamation of the President of the United States of Sept. 15, 1863, 13 U. S. Stats. at Large, Appendix iv., suspending the privilege of that writ. *Ib.*

14. The proclamation was authorized by the Act of Congress of March 3, 1863, 12 U. S. Stats. at Large, 755. *Ib.*

15. (July, 1866.) The power given to the Secretary of War to discharge minors unlawfully enlisted in the army does not take away the jurisdiction of the federal courts to inquire on

habeas corpus into the validity of the contract, and to discharge a minor who is improperly held in the service. *In re McDonald*, 1 Lowell, 100.

16. (June, 1868.) Where a bankrupt whose case is pending in one judicial district, is arrested on *mesne* process in another, the District Court of the district in which he is arrested has jurisdiction to issue a writ of *habeas corpus* for his release. *Re Devoe*, 1 Lowell, 251.

17. (March, 1870.) A bankrupt arrested on an execution issued on a judgment in an action for deceit, is not entitled to be relieved on *habeas corpus*, for the arrest is in an action founded on fraud. *Re Whitehouse*, 1 Lowell, 429.

18. (Aug., 1867.) *Held*, that if S. was held by the state court in violation of any law of the United States, this court would have power to release him on *habeas corpus*, under the act of February 5, 1867. *In the matter of Seymour*, 1 Ben. 349.

19. (Oct., 1867.) Where a person confined in prison in Philadelphia, was brought to this state in charge of an officer, under a writ of *habeas corpus ad testificandum* issued out of this court, and, after his arrival here, applied to a state court and obtained a writ of *habeas corpus*, under the operation of which he was discharged by the state court from the custody of the officer, who returned to Philadelphia without him, — *Held*, that as he was brought from Philadelphia under the writ issued by this court, and was still actually present before this court, he was still under its control, and must be sent back to the place from which he was brought for the purpose of testifying, and that, as his proper guardian had left him, he must be returned by the marshal of this district. *In the matter of Hamilton*, 1 Ben. 455.

20. Where a person, arrested as a deserter from the military service, was brought up under a writ of *habeas corpus* issued by this court, and the military authorities made return that he was regularly enlisted into the military service of the United States, which return the petitioner traversed, and, on the traverse, evidence was taken as to the identity of the petitioner with the person enlisted, — *Held*, that on the proofs, the petitioner was the person enlisted, and that, as he was regularly enlisted, he must be remanded. *Id.*

21. (May, 1868.) Where a party was charged, before a United States commissioner, with embezzlement of the funds of

a national bank, and with having made false entries in its books, and, an examination having been had, was held for trial, and the proceedings were brought before the court for review, by *habeas corpus* and *certiorari*, — *Held*, that the court, on such review will examine the evidence before the commissioner, and will do what he ought to have done. *Matter of Van Campen*, 2 Ben. 419.

22. (Nov., 1868.) Where, on writs of *habeas corpus* and *certiorari* to a United States commissioner, it appeared that the commissioner had issued a warrant to arrest the petitioner, on a charge of conspiring to defraud the United States, in the Eastern District of Michigan, who had been arrested and brought before him, and demanded an examination, and on the examination the evidence consisted of an indictment found against him in the Eastern District of Michigan, and proof that on that indictment the District Court of that district had issued a warrant for his arrest, the indictment averring that the prisoner, with certain others named, did, at the city of Washington, conspire, combine, confederate, and agree together to defraud the United States, in a manner particularly set forth, and that one of the parties to said conspiracy, named Lee, at Detroit, in the Eastern District of Michigan, in pursuance of said conspiracy, did do an act to effect the object of said conspiracy, said act being particularly set forth; and on such proof the commissioner committed the prisoner for trial in the Eastern District of Michigan, and thereupon this *habeas corpus* was issued, and the discharge of the prisoner claimed, on the sole ground that the indictment produced did not aver that an offense against the United States had been committed in the Eastern District of Michigan, —

Held, that the question whether the indictment sufficiently averred an offense committed in the Eastern District of Michigan should not be prejudged on a proceeding like this;

That on such a proceeding the indictment must be considered sufficient, unless it be so defective in its material averments that it would be the manifest duty of a court, before which it was presented by a grand jury, to decline to take action upon it;

That this indictment was not of that character. *Matter of Clark*, 2 Ben. 540.

23. Whether in such a proceeding before a commissioner, such an indictment can be examined, and its sufficiency passed upon, *quære*. *Ib*.

24. (Dec., 1868.) Where a tobacco manufacturer was summoned by an assessor of internal revenue to appear and produce all books of account containing entries relating to his business, and failed to obey the summons, whereupon an attachment was issued by a United States commissioner against him, and he was arrested and committed by the commissioner to the custody of the marshal till he should produce the books, whereupon a writ of *habeas corpus* was issued in his favor, on the hearing on which he claimed that a criminal proceeding had been commenced against him for making false returns to the assessor, and that he could not produce the books or give the evidence without criminating himself, —

Held, that he must bring the books which contained entries relating to his business, before the assessor, and must then be asked to exhibit any entry relating to a particular point to be named in the inquiry, and, if he should say that he could not do so without criminating himself, he would be protected from exhibiting it. *Matter of Lippman*, 3 Ben. 95.

25. (June, 1869.) A *habeas corpus*, to bring before the court a prisoner confined under sentence in the Penitentiary on Blackwell's Island, is properly directed to the warden of the Penitentiary. *Matter of DePuy*, 3 Ben. 307.

26. (Oct., 1869.) Where a bankrupt, having been arrested under an order of arrest issued out of a state court, during the pendency of the bankruptcy proceedings, is brought before the bankruptcy court on *habeas corpus*, that court cannot go into an inquiry whether, in fact, the debt for which the bankrupt was arrested was one which, under the thirty-third and thirty-fourth sections of the Bankrupt Act, cannot be discharged by the discharge in bankruptcy, but can only inquire whether or not, from the face of the papers on which the state court acted in ordering the arrest, it appears that the state court founded the order on such a debt. *Matter of Valk*, 3 Ben. 431.

27. (Nov., 1869.) A writ of *habeas corpus* was issued on the petition of the wife of F., to inquire into the regularity of the enlistment of F. into the army of the United States. . . .

Held, that the wife of F. might prosecute the writ. *Matter of Ferrens*, 3 Ben. 442.

28. (April, 1876.) T. was commissioned by the Governor of the State of Arkansas to present to the Governor of the State

of New York a requisition for the surrender of a fugitive from justice from Arkansas, named McD., which was based on an indictment found against McD., by the grand jury of Ashley County, Arkansas. T. presented the requisition and the authenticated indictment to the Governor of New York, who issued to the sheriff of the county of Kings a mandate for the arrest of McD., and his delivery to T. as the agent of the State of Arkansas. The sheriff arrested McD. in pursuance of the mandate, but before he was delivered to T. he was released from the custody of the sheriff upon *habeas corpus* issued by a justice of the Supreme Court of the state. McD. thereupon commenced a suit against T. for malicious prosecution, and obtained from the Supreme Court of the state an order for the arrest of T. Being held in custody under such order of arrest, T. presented a petition to this court for a *habeas corpus*, setting forth the facts and claiming his discharge on the ground that he was held in custody by reason of acts committed by him in pursuance of the laws of the United States, and which were justified by those laws.

Held, that the only acts charged upon T. were acts done by him as the agent appointed by the Executive of the State of Arkansas, which acts were those prescribed by the act of Congress of 1793, now sec. 5278 of the Revised Statutes of the United States;

That this court therefore had jurisdiction, under sec. 753 of the Revised Statutes, to grant the writ of *habeas corpus* for the purpose of inquiring into the cause of his restraint;

That the governors of the states and their agents, in reference to the extradition of fugitives from the justice of a state, are compelled to rely upon the statutes of the United States, for authority to do the acts required thereby, and the statutes of the United States, when complied with, afford them justification;

That the petitioner was therefore entitled to the writ of *habeas corpus*;

That T., who was simply the messenger of the State of Arkansas, was not bound to look into the indictment on which the requisition was founded, and determine at his peril whether it charged a crime within the meaning of the laws of the United States;

That the arrest of McD. was by order of the Governor of the State of New York; and that whatever T. had done, in present-

ing the requisition to the Governor, was only a ministerial act, for which he was justified by the direction of the Governor, and therefore he incurred no personal liability ;

That the allegation of malice against T., did not change the case, so long as the acts done were within the scope of the authority conferred upon him and justified by the laws of the United States. *Matter of the Petition of Titus*, 8 Ben. 411.

29. (Jan., 1879.) On *habeas corpus*, where the prisoner is held under an extradition warrant of the Governor, which recites that it was issued upon the requisition of the Governor of another state, accompanied by a copy of an indictment for burglary, certified as duly authenticated, the warrant is conclusive evidence that the person named therein stands charged with crime in such other state, within the meaning of the Constitution and of the Revised Statutes of the United States, sec. 578 (act of 1793, c. 7, s. 1). *Matter of Leary*, 10 Ben. 197.

30. Although by his traverse to the return the prisoner denies that any such charge of crime was made, or that there is any such indictment against him, and craves *oyer* of the same, and demands that the respondent be put to the proof thereof, it is not necessary for the respondent to produce a copy of such indictment or of the requisition of the Governor of the demanding state, nor is the prisoner entitled to a writ of *certiorari* or other process against the Governor, to compel the production of the papers on which the warrant issued, nor is it necessary that copies of said papers should be annexed to the warrant, nor that a copy of the indictment authenticated in the mode provided by act of Congress for the authentication of records of one state to be used in another (Rev. Stat. sec. 905), should be produced to the Governor before the issue of the warrant. *Ib.*

31. Where the petition for *habeas corpus* and the traverse to the return denied that the prisoner was a fugitive from justice, or the person named in the warrant, and the respondent produced a witness who testified that he attended the session of the grand jury in the county in which by the warrant it appeared that the crime of burglary was charged to have been committed, and that the subject of inquiry was the said burglary, and that he was sworn as a witness, and that his testimony related to J. L. and others, and the meetings of said persons, and that J. L.

referred to in his testimony was the prisoner, and that he procured the warrant from the Governor, —

Held, that this was sufficient evidence, at least *prima facie*, that the prisoner, whose name was J. L., was the same person named in the warrant and a fugitive from justice, although the witness testified on cross-examination that he never saw the prisoner in such other state. *Ib.*

32. Whether in all cases the warrant is conclusive evidence, on *habeas corpus*, that the person named therein is a fugitive from justice, *quære*. *Ib.*

33. The word “crime” in the article of the Constitution relating to inter-state extradition and the statute (Rev. Stat. sec. 5278), includes every act made criminal by the law of the demanding State, whether it was so at common law or not, and even though made so by a law subsequent to the adoption of the Constitution and the passage of said act of Congress. *Ib.*

34. Under the Revised Statutes of the United States, sec. 760, no pleading is required after the traverse to the return. The new matter averred therein is to be deemed at issue. *Ib.*

35. On *habeas corpus*, the question of the identity of the prisoner with the person named in the warrant is always open. *Ib.*

36. A court of the United States has jurisdiction of a petition for *habeas corpus*, by a person alleged to be illegally restrained of his liberty under or by color of the authority of the United States, although a proceeding by *certiorari* is pending in a state court at his suit, for the review of a decision of an inferior court dismissing the writ of *habeas corpus* issued on his petition. *Ib.*

37. On *habeas corpus* before a court of the United States, sued out by a prisoner held under a warrant of the Governor, as a fugitive from justice, it is not necessary that notice of the proceeding be given to the attorney-general of this state. *Ib.*

38. (1807.) *Habeas corpus ex parte* the mariners, issued by Judge Peters to the keeper of the Philadelphia prison.

The mariners had deserted from a ship on shore and in a perilous situation, and were confined at the instance of the master. The judge considered the voyage broken up by the misfortunes of the ship, and discharged the mariners from imprisonment. *Sims v. Sundry Mariners*, 2 Pet. Adm. 393. ,

Holidays.

1. (May, 1872.) It is not illegal to hold a court of the United States on a day appointed by the President of the United States, and by the Governor of the Commonwealth, as a day of thanksgiving. *Re McGlynn*, 2 Lowell, 127.

Informer.

1. (Oct., 1877.) The action provided for in secs. 3490, 3491, 3492, 3493, of the Revised Statutes, to recover a penalty and damages for making a false claim against the United States, is a *qui tam* action, and may be commenced by any person who will, without the previous authority or consent of the district attorney of the United States; and therefore the complaint in such an action need not be subscribed by such district attorney, but the same is sufficiently "subscribed by the party or his attorney" within the meaning of sec. 79 and 81 of the Oregon Civil Code, when it is "subscribed" by the attorney of the person who brings such action. *United States v. Griswold*, 5 Sawyer, 25.

2. In such an action the United States is the plaintiff, and the defendant may be arrested and held to bail, without an undertaking on the part of the plaintiff to the defendant, for damages in case the arrest "be wrongful or without sufficient cause," as provided in sec. 107 of the Oregon Civil Code. *Ib.*

3. If the facts necessary to authorize such an arrest sufficiently appear in the complaint in such action, and the same is verified by the oath of the informer or person bringing the same, it is an affidavit, within the meaning of sec. 3492 aforesaid, and an order for the arrest of the defendant may be made thereon. *Ib.*

4. (March, 1852.) The eighth section of the act of Feb. 28, 1799, in relation to prosecutions upon a penal statute by an informer, contemplates an action in the name of the informer alone, as well as in the name of the United States, to the use in whole or in part of the informer. *United States v. The Steamboat Planter*, Newb. Adm. 262.

5. The informer is liable for costs, although the United States may be a party on the record. *Ib.*

6. The court may require an informer to give security for costs, and in case of refusal, strike his name from the record. *Ib.*

Interpreter.

1. (Dec., 1854.) The court will not compel the attendance of an interpreter, or expert, who has neglected to obey a subpoena, unless in case of necessity. *In the Matter of Roelker*, 1 Sprague, 276.

2. *Seem*, that a person may be compelled to attend as an interpreter, in case no other can be obtained to perform that office. *Ib.*

Judgment.

1. (Jan., 1834.) *Mandamus*. The district judge of Louisiana refused to sign the record of a judgment rendered in a case, by his predecessor in office. By the law of Louisiana, and the rule adopted by the District Court, the judgment, without the signature of the judge, cannot be enforced. It is not a final judgment, on which a writ of error may issue, for its reversal. Without the action of the judge, the plaintiffs can take no step in the case. They can neither issue execution on the judgment, nor reverse the proceedings by writ of error.

On a motion for a *mandamus*, the court *held*: The district judge is mistaken in supposing that no one but the judge who renders the judgment, can grant a new trial. He, as the successor of his predecessor, can exercise the same powers, and has a right to act on every case that remains undecided upon the docket, as fully as his predecessor could have done. The court remains the same, and the change of the incumbents cannot and ought not, in any respect, to injure the rights of litigant parties. The judgment may be erroneous, but this is no reason why the judge should not sign it. Until his signature be affixed to the judgment, no proceedings can be had for its reversal. He has, therefore, no right to withhold his signature, where, in the exercise of his discretion, he does not set aside the judgment. The court, therefore, directed that a writ of *mandamus* be issued, directing the district judge to sign the judgment. *Life and Fire Ins. Co. v. Wilson*, 8 Pet. 291.

2. On a *mandamus* a superior court will never direct in what manner the discretion of an inferior tribunal shall be exercised, but they will, in a proper case, require an inferior court to de-

cide. But, so far as regards the case under consideration, the signature of the judge was not a matter of discretion. It followed as a necessary consequence of the judgment, unless the judgment had been set aside by a new trial. The act of signing the judgment is a ministerial and not a judicial act. *Ib.*

3. (Jan., 1840.) Action in the District Court. A verdict was rendered for the United States; and, without a judgment on the verdict, the case was, by consent, removed to the Circuit Court of the United States. In the Circuit Court certain questions were presented on the argument, and a statement was made of those questions, and they were certified, *pro forma*, at the request of the counsel for the parties, to the Supreme Court, for their decision. No difference of opinion was actually expressed by the judges of the Circuit Court. By the court: "The judgment or other proceedings on the verdict ought to have been entered in the District Court; and it was altogether irregular to transfer the proceeding in that condition, to the Circuit Court." The case was remanded to the Circuit Court. *United States v. Stone*, 14 Pet. 524.

4. (Jan., 1842.) If the question of the right to include the interest on the judgment, in the execution, were properly before the court, no reason could be seen why interest on a judgment, which is secured by positive law, is not as much a part of the judgment, as if expressed in it. *Amis v. Smith*, 16 Pet. 303.

5. (Jan., 1846.) By the law of Mississippi, a judgment is a lien upon personal as well as real estate, from the time of its rendition. *Brown v. Clarke*, 4 How. 4.

6. Where there has been a judgment, an execution levied upon personal property, and a forthcoming bond, the property levied upon is released by the bond, and the lien of the judgment destroyed. *Ib.*

7. If therefore, after this, another judgment be entered against the original defendant, this second judgment is a lien upon the property which has been released by the bond. *Ib.*

8. The lien thus acquired by the second judgment, is not destroyed by subsequently quashing the forthcoming bond. The effect of such quashing is not to revive the first judgment, and thus restore the lien which was superseded by the execution of the bond. *Ib.*

9. If the forthcoming bond had been shown to have been void *ab initio*, the result would be different. *Ib.*

10. (Oct., 1877.) The record of a District Court of the United States is not within the Act of Congress approved May 29, 1790, (1 Stat., 122), prescribing the mode in which the records and judicial proceedings of the state courts shall be authenticated, but is, when duly certified by the clerk under its seal, admissible as evidence in every other court of the United States. *Turnbull v. Payson*, 5 Otto, 418.

11. (May, 1812.) The court will go back to the first error in the pleadings, and give judgment accordingly. *United States v. Sawyer*, 1 Gall. 86.

12. (Oct., 1812.) *Semble*, that in cases within the Collection Act of 2d March, 1799, ch. 128, sec. 89, judgment cannot be rendered on the bail bond until after twenty days from the decree of condemnation, and then in open court. *McLellan v. United States*, 1 Gall. 227.

13. (May, 1868.) There being no appearance in the court below, there could be no issue of fact, nor direction for trial by jury, and therefore judgment was properly entered by default. *Semple v. United States*, Chase, 259.

14. (May, 1869.) Judgment for a penalty under the revenue law was rendered against T. At the same time it was adjudged that B. was entitled to a moiety of the judgment as the first informer. Afterward the President, by a pardon, remitted the whole penalty: *Held*, that the pardon operated to remit the moiety adjudged to the informer, as well as to discharge the portion coming to the United States.

If the pardon is issued after judgment for the penalty, the court may order a stay of proceedings and process. *United States v. Thomasson*, 4 Biss. 336.

15. (Sept., 1869.) A judgment and subsequent proceedings had in a Circuit or District Court, which are void for want of jurisdiction, may be vacated upon motion in the same court notwithstanding the expiration of the term at which the judgment was rendered. *Shuford v. Cain*, 1 Abb. U. S. 302.

16. (June, 1870.) The proceeding to obtain naturalization is clearly a judicial one. A hearing is required to be had in open court, and the right can be conferred only by the judgment of the court, and upon satisfactory proof. It, therefore, has all the

elements of a judgment. That it has the character and attributes of a judgment, and is equally conclusive, the authorities are entirely uniform. [Authorities cited.] *The Acorn*, 2 Abb. U. S. 444.

17. (Dec., 1874.) In this district, if there is a stay of proceedings against one of several joint defendants, pending action upon his discharge in bankruptcy, the case cannot proceed against his co-defendants unless the plaintiff chooses to enter a *nolle prosequi* as to him. *Hinman v. Cutler*, 2 Lowell, 364.

18. A qualified judgment cannot be entered against one of several joint defendants, which leaves the liability of his co-defendants undetermined. *Ib.*

Mandamus.

1. (Dec., 1872.) *Mandamus* from the different courts will not lie, by an assignee in bankruptcy, representing sundry bankrupts, against the auditor of a state, to recover from the state taxes long before paid into the state treasury, upon the ground that the legislature had by law directed them to be refunded to the parties who had paid the same, or to their representatives. Such a *mandamus* is not ancillary to a jurisdiction already acquired, but is in effect an original proceeding. *Graham v. Norton*, 15 Wall. 427.

New Trial.

1. (Jan., 1836.) Although a *venire de novo* is frequently awarded by a court of error upon a bill of exceptions, to enable parties to amend, and though amendments may, in the sound discretion of the court, upon a new trial, be permitted, the *venire de novo* is, in no instance, anything more than an order for a new trial in a cause in which the verdict or judgment is erroneous in matter of law; and is never "equivalent to a new suit." No statute of the United States alters the law in this regard. *United States v. Hawkins*, 10 Pet. 125.

2. (Feb., 1832.) In a civil action brought to recover a pecuniary penalty, the court has full power to grant a new trial, although the verdict was in favor of the defendant. *United States v. Halberstadt*, Gilp. 262.

Oyer.

1. (May, 1812.) Oyer of a bond does not include oyer of its condition; nor *e converso*. If oyer is wanted, it must be prayed of each. *United States v. Sawyer*, 1 Gall. 86.

2. If the defendant, on oyer, does not set out the whole of the bond, the plaintiff may relieve himself by praying it to be enrolled. *Ib.*

Practice. Miscellaneous.

1. (Feb., 1817.) Nature of the process of *sequestration*, in the practice of the civil law. *Laidlaw v. Organ*, 2 Wheat. 179, note *a*.

2. (Feb., 1823.) Collusive captures and violations of the revenue laws, committed by a private armed vessel, are a breach of the condition of the bond given by the owners, under the Prize Act of June 26, 1812, c. 430, s. 3. If such breach appear upon a demurrer, the defendants are not entitled to a hearing in equity, under the Judiciary Act of 1789, c. 20, s. 26. *Greeley v. United States*, 8 Wheat. 257.

3. (Jan., 1833.) All the proceedings in a case are supposed to be within the control of the court while they are in paper, and before a jury is sworn, or judgment given. Orders made may be revised, and such as, in the judgment of the court, may have been irregular or improperly made, may be set aside. *Breedlove v. Nicolet*, 7 Pet. 414.

4. (Jan., 1833.) It is not essential that any court, in establishing or changing its practice, should do so by the adoption of written rules. Its practice may be established by a uniform mode of proceeding for a series of years, and this forms the law of the court. In this case it appears that the Louisiana law, which regulated the practice of the District Court of Louisiana, has not only been repealed, but the record shows that in the year 1830, when the decision was given in this case, there was no such practice of the court, as was adopted by the act of Congress of 26 May, 1824. The court refused the statement of facts to go to the jury for a special finding, because they say "such was contrary to the practice of the court." *Duncan v. United States*, 7 Pet. 436.

5. By the COURT: On a question of practice, it would seem that the decision of the District Court, as to what the practice is, should be conclusive. The practice of the court cannot be better known and established than by its own solemn adjudications on the subject. *Ib.*

6. (Oct., 1873.) Where the purpose of testimony is to impeach a witness for want of veracity, it is not improper to ask the person on the stand, what is the general "reputation" for truth of the witness sought to be impeached. It is even more proper than to ask what is his general "character" for truth; though the question is sometimes asked in the latter form; the word "character" being then used as synonymous with "reputation." *Knode v. Williamson*, 17 Wall. 587.

7. (May, 1814.) The marshal may have an attachment, to enforce the payment of his fees of office, against suitors in the court. *Anonymous*, 2 Gall. 101.

8. So against an indorser on the writ, who by the *lex loci* is liable to respond the costs. *Ib.*

9. (April, 1872.) If a third person intervenes for the purpose of setting up some charge or lien upon the property and not of resisting the confiscation, collateral proceedings may be taken suitable to the nature of the case. *The Confiscation Cases*, 1 Woods, 221.

10. (April, 1872.) The correspondence between a district attorney representing the United States, and the Attorney-General, is confidential in its nature, and cannot be cited by third persons. *United States v. Six Lots of Ground*, 1 Woods, 234.

11. A District Court of the United States cannot, three years after rendering a decree in a confiscation case, sit as a court of error upon its own decree and reverse it. *Ib.*

12. (Feb., 1869.) It is not necessary, in order to establish that a particular mode of proceeding has been adopted by a United States court, that there should be found a written rule declaring such adoption. The practice of a court may be established without the existence of a positive written rule. *United States v. Stevenson*, 1 Abb. U. S. 495.

Production of Books and Papers.

1. (Jan., 1881.) What is sufficient length of notice to produce an original paper, to admit evidence of its contents. *United States v. Duff*, 19 Blatchf. 9.

2. Notice to produce a letter covers the envelope of the letter. *Ib.*

3. (Nov., 1875.) Proceedings against distillery. The court had the power to make the order requiring the production of the books and papers, and to enforce it. *United States v. Distillery*, 6 Biss. 483.

4. (June, 1870.) Where a summons for the production of books has been issued by the supervisor of internal revenue [act of July 20, 1868, sec. 49, 15 Stat. 144], and such summons has been duly executed, but not complied with, a United States district judge may, upon application and proof of these facts, issue a writ of attachment. *Stanwood v. Green*, 2 Abb. U. S. 185.

5. (Feb., 1879.) As the matter of the production of books and papers is expressly regulated by act of Congress, it is not a matter in which, by sec. 914 of the Revised Statutes, the practice of state courts, which is broader and allows this relief before issue joined, is adopted. *United States v. Hutton*, 10 Ben. 269.

6. (May, 1832.) A proceeding *in rem* is not within the provisions of the act of Sept. 24, 1789, which authorizes an order to produce books and writings on the trial of actions at law. *United States v. 28 Packages of Pins*, Gilp. 306.

7. The affidavit of a party interested, taken without cross-examination, is competent evidence on a motion for an order on the opposite party, to produce books and writings, under the provisions of the act of Sept. 24, 1789. *Ib.*

8. (Feb., 1840.) The counsel for the plaintiffs in a suit for a forfeiture having notified the claimants to produce a certain invoice, the latter declined so doing until the former would say whether they would take the invoice with or without a letter which was written on the same sheet, and offered it to the plaintiffs in either way they chose. The plaintiffs declined making a choice without first seeing the letter, and the court ordered

that the invoice should be produced, but that the letter should not be included in that order. *United States v. 25 Cases of Cloths, &c.*, Crabbe, 356.

Res Judicata.

1. (Jan., 1842.) If the contract be joint and several, and the defendants sever in their pleas, whatever may have been the doubts and conflicting opinions of former times as to the effect of a *nolle prosequi* in such a case, it has never been held that a simple discontinuance of a suit amounts to a *retraxit*; or that it in any manner worked a bar to the repetition of the plaintiff's action. *Amis v. Smith*, 16 Pet. 303.

2. (Oct., 1874.) In a case where a decree is thus authorized, [under the thirty-ninth section of the Bankrupt Act], in other words, where jurisdiction exists in the District Court of the United States, to decree a person a bankrupt, and the person has been decreed a bankrupt accordingly, a party against whom the assignee in bankruptcy brings suit in another court, not appellate, to recover assets of the bankrupt's estate, cannot show that payments made on account, had reduced the petitioning creditor's debt so low as that the bankrupt did not owe as much as the petitioning creditor in his petition alleged. The finding of the District Court of the existence of a debt to the amount of \$250, due from the party proceeded against, to the petitioning creditor, is conclusive, in a collateral action, of the fact that a debt of that amount was due. *Sloan v. Lewis*, 22 Wall. 150.

3. (Oct., 1876.) A sentence of a court, pronounced against a party without hearing him, or giving him an opportunity to be heard, is not a judicial determination of his rights, and is not entitled to respect in any other tribunal. *Windsor v. McVeigh*, 3 Otto, 274.

4. The doctrine, that where a court has acquired jurisdiction, it has a right to decide every question which arises in the cause, and its judgment, however erroneous, cannot be collaterally assailed, is only correct when the court proceeds, after acquiring jurisdiction of the cause, according to the established modes governing the class to which the case belongs, and does not transcend, in the extent or character of its judgment, the law which is applicable to it. *Id.*

5. (Oct., 1839.) The sentence of a foreign court of admiralty and prize *in rem*, is, in general, entirely conclusive on all parties in interest, and for collateral purposes. *Bradstreet v. Neptune Ins. Co.*, 3 Sumn. 600.

6. *Semble*, that no sound distinction can be made between a sentence pronounced *in rem*, by a court of admiralty and prize, and a like sentence pronounced by a municipal court, upon a seizure, or other proceedings *in rem*. *Ib.*

7. But this rule proceeds on the ground that the court pronouncing the decree, had jurisdiction over the cause, and that the thing was either positively or constructively in its possession, and submitted to its jurisdiction. *Ib.*

8. In respect to the jurisdiction of courts of prize, acting *in rem*, the courts of other nations are competent to inquire into and ascertain, whether there has been any excess of jurisdiction. But the judgments of municipal courts, when the *res* is in possession of the sovereign, must ordinarily be conclusive upon all foreign tribunals. *Ib.*

9. But in all cases where the sentence of a foreign court *in rem* is sought to be held conclusive on the parties, it must appear that there have been proper judicial proceedings, upon which to found the decree, and that there was some personal or public notice of the proceedings, to the parties in interest. *Ib.*

10. Therefore, where a vessel was seized and confiscated by the courts of Mexico, and it appeared by the record of the proceedings, that there was no suitable allegation of the offense, in the nature of a libel, and there was no statement of facts *ex directo*, upon which the sentence professed to be founded; *Held*, that the proceedings were not conclusive as to the existence of the laws of Mexico, the jurisdiction of the court, and the cause of seizure and condemnation. *Ib.*

11. (Dec., 1874.) Though a plea to the jurisdiction of a United States District Court, for irregularity in the process, if taken, might have been sustained, yet if it was not taken, and the defendant appeared, pleaded, and went to trial, and there was judgment after verdict, another United States court will treat the judgment as valid and binding. *Kerrison v. Stewart*, 1 Hughes, 67.

12. (Nov., 1871.) In an action to recover possession of and establish title to real estate, when the defendant relies upon title

derived through confiscation proceedings, no error or irregularity in such proceedings can be regarded, which does not go to show want of jurisdiction in the court which rendered the judgment condemning the property. The judgment is binding until reversed in a direct proceeding. *Bragg v. Lorio*, 1 Woods, 209.

13. (Nov., 1872.) Where a court has jurisdiction of the *res*, in a proceeding *in rem*, the record of its decree cannot be collaterally attacked for errors and irregularities appearing therein. *Otis v. The Rio Grande*, 1 Woods, 279.

14. When the jurisdiction of a court depends upon a fact which the court is required to ascertain in its decision, such decision is final until reversed in a direct proceeding for that purpose. *Ib.*

15. (May, 1873.) The District Court having necessarily passed upon the question of the authority of the officers [of the railroad company] to file the petition in bankruptcy, it cannot be disputed in a collateral proceeding. *Davis v. Railroad Co.*, 1 Woods, 661.

16. (1870.) A decree condemning property under the confiscation act, where the record of the proceeding shows that a libel of information was duly filed, and a writ of monition issued, and a return of service that the *res* has been attached, is not void on its face, and cannot be collaterally assailed in a bill to foreclose, by evidence that the *res* was always in the possession of the complainant, and hence the marshal's return was not true, and therefore, as there was no seizure, the confiscation proceeding was without jurisdiction and void. *Brown v. Hiatt*, 1 Dill. 373.

17. (June, 1871.) A mortgagee of the ship under a mortgage given to secure "one thousand pounds sterling, lawful money of Great Britain," petitioned also to be paid out of the surplus, the amount due him "in gold coin of the United States." The assignee in bankruptcy claimed that the amount should be paid in currency.

Held, that inasmuch as the questions of law involved had been decided by the District Court for the Southern District of New York, arising between the same parties, on similar mortgages on two other ships, from which decision no appeal had been taken by the assignee, this court, without passing on the questions of law involved, would consider that that decision was acquiesced in by the assignee, unless it was appealed from, and would make

a similar order. But if an appeal was taken from that decision, a decision in this case would be withheld until the determination of the questions of law by the appellate court. *The Ship Tri-mountain*, 5 Ben. 247.

18. (Aug., 1837.) Where a foreign court, not of admiralty, had decided a case on different principles from those here recognized, and leading to a different result from what would be here arrived at, though professedly deciding according to our law, this court is not concluded by such decision. *Lang v. Holbrook*, Crabbe, 179.

19. (Nov., 1837.) A judgment or dismissal of a libel, in order to bar a second suit, must have been ordered upon a hearing of the parties, or on the merits of the cause. *Sarchet v. The Sloop Davis*, Crabbe, 185.

20. A dismissal for want of appearance is not a conclusive judgment. *Ib.*

21. Where a libel is dismissed in one of the United States, for want of prosecution, such dismissal is not a bar of a subsequent proceeding for the same cause of action, in another state. *Ib.*

22. (May, 1841.) The mere naked fact that the plaintiff in the admiralty or in any other court has discontinued his action, is not a bar to a subsequent suit. *Holmes v. The Schooner Lode-mia*, Crabbe, 434.

Scire Facias.

1. (April, 1859.) The District Court has jurisdiction of all proceedings consequent upon the judgment to obtain satisfaction. *Campbell v. Hadley*, 1 Sprague, 470.

2. Where a bond for the jail-liberties is taken and duly returned and enrolled, the court has jurisdiction of a petition in the nature of a *scire facias* upon such bond. *Ib.*

State Practice.

1. (Jan., 1833.) This is an official bond, and was given in pursuance of a law of the United States. By this law, the conditions of the bond were fixed; and also the manner in which its obligations should be enforced. It was delivered to the Treasury Department at Washington; and to the treasury did

the paymaster and his sureties become bound to pay any moneys in his hands. These powers exercised by the Federal Government, cannot be questioned. It has the power of prescribing under its own laws, what kind of security shall be given by its agents for a faithful discharge of their public duties. And in such cases the local law cannot affect the contract, as it is made with the government, and, in contemplation of law, at the place where its principal powers are exercised. *Duncan v. United States*, 7 Pet. 435.

2. (Sept., 1872.) The process and forms of proceeding adopted by Congress from the state laws, are binding on the United States. *United States v. Tetlow*, 2 Lowell, 159.

3. (Jan., 1875.) The state practice is applicable to suits at law in the District Court.¹ *United States v. Tracy*, 8 Ben. 1.

Transfer of Causes.

1. (Dec., 1874.) There is no authority of law for removing civil causes, irregularly brought in the Circuit Court of the United States proper for such district, into the District Court. *Kerrison v. Stewart*, 1 Hughes, 67.

Waiver.

1. (Jan., 1837.) It was urged that the transcript of the record from the District Court, showed that a general demurrer had been filed, which had not been disposed of; that a nonsuit had been taken by the defendant in the District Court, and that a motion to set it aside had been overruled; that the case had been submitted to the jury without an issue between the parties, and that the verdict had been returned by eleven, instead of twelve jurors. On these alleged grounds it was claimed that the judgment of the District Court should be reversed. By the Court: Whatever might have been the original imperfections, if not waived expressly, they were so by the defendant going to trial upon the merits; and thus they cannot constitute an objection to the judgment on a writ of error. *Evans v. Gee*, 11 Pet. 80.

¹ Since the act of June 1, 1872. See 17 Stat. p. 197, also Revised Statutes, sec. 914.

2. (Jan., 1849.) Although, as a general rule, all issues, whether of law or fact, ought to be disposed of in some way, by the court below, yet, under the particular circumstances of this case, which presented the appearance upon the record of a demurrer which had not been disposed of, this court will presume that the demurrer had been withdrawn or overruled. *Townsend v. Jemison*, 7 How. 706.

3. The thirty-second section of the Judiciary Act (1 Stat. at Large, 91), forbids a reversal of the judgment, on account of the omission of the clerk to record such waiver or overruling. *Id.*

4. The statutes of jeofails examined. *Id.*

5. (Dec., 1866.) A motion for a new trial is not a waiver of exceptions. *United States v. Dashiell*, 4 Wall. 182.

6. (Dec., 1866.) Where there is a plea to merits, and the parties go to trial accordingly, irregularities previously set up, by pleas in abatement and demurrers to them, are waived. *Bell v. Railroad Co.*, 4 Wall. 599.

7. (Dec., 1870.) An entry in the record of the District Court, that, on the return-day of the process of attachment, A. B. "appears for the respondent, and has a week to perfect an appearance, and to answer," does not show a submission to the jurisdiction and a waiver of objection, which precludes such respondent from insisting thereafter, that the court has not, by attachment of goods, obtained jurisdiction to proceed in the cause against him. *Atkins v. Fibre Disintegrating Co.*, 7 Blatchf. 555.

8. (May, 1881.) Where a complaint shows jurisdiction of the subject-matter, and the defendant appears generally by interposing a demurrer, he cannot raise thereon the point that the complaint does not show the issuing or service of any process on the defendant. *Town of Lyons v. Lyons National Bank*, 19 Blatchf. 279.

Writ. Capias. Summons.

1. (Feb., 1878.) In a suit at law, a writ in the form of a *capias*, issued to the marshal as process for the commencement of suit, in December, 1877, and served on the defendants, was held to be substantially a compliance with the requirements of the Code of Procedure of New York, in regard to a summons and its contents and service, and to be valid, under sec. 914 of

the Revised Statutes of the United States. *Johnson v. Healy*, 9 Ben. 318.

2. A form of summons set forth which is regarded as proper for commencing a suit at law in the federal courts in New York, without holding that it is necessarily the only proper form. *Ib.*

Suits in Equity to enforce Internal Revenue Taxes.

Fifth. Of all suits in equity to enforce the lien of the United States upon any real estate for any internal revenue tax, or to subject to the payment of any such tax any real estate owned by the delinquent, or in which he has any right, title, or interest. [See s. 3207.]

20 July, 1868, c. 186, s. 106, v. 15, p. 167.

Suits for Penalties and Damages for Frauds against the United States.

Sixth. Of all suits for the recovery of any forfeiture or damages under section thirty-four hundred and ninety, title, "DEBTS DUE BY OR TO THE UNITED STATES;" and such suits may be tried and determined by any District Court within whose jurisdictional limits the defendant may be found. [See ss. 3490-3494.]

2 March, 1863, c. 67, s. 4, v. 12, p. 698.

Suits under Postal Laws.

Seventh. Of all causes of action arising under the postal laws of the United States.

3 March, 1845, c. 43, s. 20, v. 5, p. 739.

JURISDICTION IN ADMIRALTY AND MARITIME CAUSES AND SEIZURES ON LAND.

Admiralty Causes and Seizures on Land.

Eighth. Of all civil causes of admiralty and maritime jurisdiction; saving to suitors in all cases the right of a common-law remedy, where the common law is competent to give it; and of all seizures on land and on waters not within admiralty and maritime jurisdiction. And such jurisdiction shall be exclusive, except in the particular cases

where jurisdiction of such causes and seizures is given to the Circuit Courts. [And shall have original and exclusive cognizance of all prizes brought into the United States, except as provided in paragraph six of section six hundred and twenty-nine.]

24 Sept., 1789, c. 20, s. 9, v. 1, p. 76.

22 March, 1794, c. 11, s. 1, v. 1, p. 347.

10 May, 1800, c. 51, ss. 1, 5, v. 2, pp. 70, 71.

2 March, 1807, c. 22, ss. 2, 7, v. 2, pp. 426, 428.

6 Aug., 1861, c. 60, s. 2, v. 12, p. 319.

30 June, 1864, c. 137, ss. 41, 179, v. 13, pp. 239, 240, 305.

3 March, 1865, c. 78, s. 1, v. 13, p. 483.

13 July, 1866, c. 184, ss. 9, 19, v. 14, pp. 111, 145, 152.

2 March, 1867, c. 169, ss. 10, 25, v. 14, pp. 475, 483.

20 July, 1868, c. 186, s. 106, v. 15, p. 167.

18 Feb., 1875, c. 80, v. 18, p. 317.

Account.

1. (Jan., 1837.) The admiralty has no jurisdiction in matters of account between part-owners. *Steamboat Orleans v. Phœbus*, 11 Pet. 175.

2. (Dec., 1854.) Where a libel was filed *in personam*, against the owners of a steamboat in California, by their general agent or broker, for the balance of an account for money paid, laid out and expended, in paying for supplies, repairs, and advertising of the steamboat, together with commissions on the disbursements, the libel was properly dismissed for want of jurisdiction. *Min-turn v. Maynard*, 17 How. 477.

3. There was nothing in the case to bring it within the class of maritime contracts; nor does the local law of California, which authorizes an attachment of vessels for supplies or repairs, extend to the balance of accounts between agent and principal, who have never dealt on the credit, pledge, or security of the vessel. *Ib.*

4. (Oct., 1854.) The admiralty has not jurisdiction over a libel which asserts an equitable title to one-fourth of a vessel and claims an account of its earnings, and of the proceeds of its sale, although the part owners sailed the vessel, and the libellant worked as a carpenter on board. *Kellum v. Emerson*, 2 Curt. C. C. 79.

5. Extent of the jurisdiction to take an account, examined. *Ib.*

6. (Aug., 1855.) The admiralty has no jurisdiction over matters of account, merely as accounts, although it may have jurisdiction over all the items in the account. *The Larch*, 3 Ware, 28.

7. If it is apparent from the pleadings that the main object of the libel is the settlement of the account, the libel will be dismissed. *Ib.*

8. If the accounts arise incidentally in the cause, then it is a question of sound discretion, whether the court will proceed with the cause. If the accounts are simple, consisting merely of offsets, the court will strike the balance and give judgment for that. If they are multifarious and involve the settlement of intricate questions of law or equity, which more properly belong to another forum, the libel will be dismissed. *Ib.*

9. (Feb., 1830.) Where a seaman agrees to serve for one-half of the earnings and profits of the vessel, he cannot maintain an action *in rem* to recover such share, unless an account has been stated, or the claim has been otherwise reduced to a certainty. *The Fairplay*, 1 Blatchf. & H. Adm. 136.

10. An action *in rem* cannot be brought to compel an accounting between parties. *Ib.*

11. Whether an action *in personam* in admiralty will lie to compel an accounting between parties, *quære*. *Ib.*

12. (April, 1849.) A court of admiralty in this country may entertain a suit *in personam* for a balance claimed by a seaman to be due to him on an account of the profits of a voyage, as his share thereof, where the libel avers that a specific sum came to the hands of respondent as the proceeds of the voyage, and that the libellant is entitled to a specific share of such sum. *Duryee v. Elkins*, Abb. Adm. 529.

13. On such a libel, the court may inquire into the validity of any charges in account made by the respondent against the libellant, and relied upon as reducing or satisfying his share. *Ib.*

14. A court of admiralty cannot entertain a libel *in personam* which seeks to bring the respondent to a general accounting for the proceeds of the voyage, and to compel an adjustment of the proportion in which the libellant is entitled to share in them. *Ib.*

15. (Sept., 1850.) No action can be maintained in a court of admiralty by one ship-owner against another, to collect a balance to be determined in favor of the libellant on the settlement of the joint accounts of the parties. *Martin v. Walker*, Abb. Adm. 579.

Admiralty Jurisdiction. Generally.

1. (Feb., 1808.) All seizures under laws of impost, navigation, or trade of the United States, where the seizures are made on waters navigable from the sea, by vessels of ten or more tons burden, are civil causes, of admiralty and maritime jurisdiction, and are to be tried *without* a jury. *United States v. Schooner Betsey*, 4 Cranch, 443.

2. (Jan., 1828.) The Constitution and laws of the United States give jurisdiction to the District Courts, over all cases in admiralty; but jurisdiction over the case does not constitute the case itself. *American Ins. Co. v. Canter*, 1 Pet. 512.

3. (Jan., 1847.) The grant in the Constitution, extending the judicial power "to all cases of admiralty and maritime jurisdiction," is neither to be limited to, nor to be interpreted by, what were cases of admiralty jurisdiction in England when the Constitution was adopted by the states of the Union. *Waring v. Clarke*, 5 How. 441.

4. Admiralty jurisdiction, in the courts of the United States, is not taken away because the courts of common law may have concurrent jurisdiction, in a case, with the admiralty. Nor is a trial by jury any test of admiralty jurisdiction. The subject-matter of a contract, or service, gives jurisdiction in admiralty. Locality gives it in tort, or collision. *Id.*

5. In cases of tort or collision, happening upon the high seas, or within the ebb and flow of the tide, as far up a river as the tide ebbs and flows, though it may be *infra corpus comitatus*, courts of admiralty of the United States have jurisdiction. *Id.*

6. The meaning of the clause in the ninth section of the Judiciary Act of 1789, saving to suitors, in all cases, a common-law remedy, when the common law is competent to give it, is, that in cases of concurrent jurisdiction in admiralty and at common law, the jurisdiction in the latter is not taken away. *Id.*

7. (Dec., 1859.) Where certain parties joined together to

carry on an adventure in trade, for their mutual benefit, one contributing a vessel, and the other his skill, labor, experience, &c., and there was to be a communion of profits on a fixed ratio, it was a contract over which a court of admiralty had no jurisdiction. *Ward v. Thompson*, 22 How. 330.

8. (Dec., 1861.) The jurisdiction of the federal courts in admiralty and maritime cases, is given in general terms, by the Constitution, and the extent of it is to be ascertained by a reasonable and just construction of the words used, when taken in connection with the whole instrument. *Steamer St. Lawrence*, 1 Black, 522.

9. No state can enlarge it, nor can an act of Congress or rule of court make it broader than the judicial power may determine to be its true limits. *Ib.*

10. Congress may prescribe the forms and mode of proceeding, in the tribunals it establishes to carry this power into execution. *Ib.*

11. Brief history of the legislation of Congress upon this subject. *Ib.*

12. (Dec., 1866.) The provision of the ninth section of the Judiciary Act, which vests in the District Courts of the United States exclusive cognizance of civil causes of admiralty and maritime jurisdiction, is constitutional. *The Moses Taylor*, 4 Wall. 411.

13. The clause of the ninth section, saving to suitors "the right of a common-law remedy, where the common law is competent to give it," does not save a proceeding *in rem*, as used in the admiralty courts. Such a proceeding is not a remedy afforded by the common law. *Ib.*

14. (Oct., 1878.) The admiralty jurisdiction of the District Courts of the United States does not extend to seizures made on land. *United States v. Winchester*, 9 Otto, 372.

15. (May, 1812.) Every nation has exclusive jurisdiction over the waters adjacent to its shores, to the distance of a cannon shot or marine league. A departure from any place within the jurisdictional limits of the United States, although such place be not within any port, is within the provisions of the embargo act of 22d December, 1807, ch. 5. *Brig Ann*, 1 Gall. 61.

16. (Oct., 1816.) The District Court, as a court of admiralty

and maritime jurisdiction, may entertain suits for all torts, damages, and unlawful seizures at sea; and as a court of revenue, it may entertain suits for the trial of property seized for violations of municipal laws; and, as incident to this jurisdiction, may compel a redelivery of the property, and award damages for any loss of, or injury to it. It may compel a seizer to proceed to adjudication, in the same manner as it does a captor. After process served in proceedings *in rem*, the thing is deemed in the custody of the court, though in the actual possession of the collector, &c., under the act of 1799. *Burke v. Trevitt*, 1 Mason, 96.

17. (Oct., 1836.) Courts of admiralty, so far as their powers extend, act as courts of equity. *Brown v. Lull*, 2 Sumn. 444.

18. (May, 1837.) A suit in a state court by replevin, or by an attachment of the property in question, cannot supersede the right of a court of admiralty, to proceed by a suit *in rem*, to enforce a right or lien against the property. *Certain Logs of Mahogany*, 2 Sumn. 589.

19. (Oct., 1843.) The courts of the United States in the exercise of their admiralty and maritime jurisdiction, are exclusively governed by the legislation of Congress, or in the absence thereof, by the general maritime law; and no state can, by its local legislation, narrow or enlarge such jurisdiction. *Barque Chusan*, 2 Story, 456.

20. In a lien for supplies or repairs to a domestic vessel, the admiralty jurisdiction depends upon the local law of the particular state where they are made; but questions of lien upon a foreign vessel are governed by the general maritime law, and not by the local law of any state. *Ib.*

21. Congress, by conferring the admiralty and maritime jurisdiction upon the courts of the United States has, by implication, adopted the maritime law, inasmuch as such law is the law of the admiralty jurisdiction, until modified by Congress. *Ib.*

22. (April, 1829.) The jurisdiction of the District Court, under the ninth section of the Judiciary Act of 1789, embraces all cases of a marine nature, whether they be particularly of admiralty cognizance or not; and such jurisdiction, and the law regulating its exercise, are to be sought for in the general marine laws of nations, and are not confined to that of England, or any other particular maritime nation. *The Seneca*, 3 Wall. Jr. 395.

23. The provisions of the French marine law which authorize a compulsory sale of a vessel, in case of partners disagreeing about the use of her, are part of the general law of admiralty binding on the courts of the country. *Ib.*

24. (Nov., 1819.) The admiralty courts of the United States may proceed, under their general powers, in every case in which they are not restrained from the exercise of those powers by statute. *United States v. Schooner Little Charles*, 1 Brock. 380.

25. (April, 1851.) If the District Court has not jurisdiction independently of the consent of the parties, that consent could not confer it. *McKim v. Kelsey*, Taney's Dec. 502.

26. (Sept., 1877.) Where the admiralty jurisdiction of the United States courts attaches at all, it does so exclusively of the jurisdiction of the state courts. *Ferry Steamers Norfolk and Union*, 2 Hughes, 123.

27. (Nov., 1872.) When at and after the beginning of proceedings in admiralty by the filing of the libel, the court is in actual possession of the *res*, its jurisdiction is not lost by the removal of the *res* from the possession of the court and beyond its territorial jurisdiction, without the consent of the libellant. *Otis v. The Rio Grande*, 1 Woods, 279.

28. (July, 1855.) Though there may be a remedy at law, on bonds given, yet that does not take away the jurisdiction in admiralty. *Dike v. Propeller St. Joseph*, 6 McLean, 573.

29. Where a lien in admiralty attaches, it follows the proceeds into the hands of assignees. *Ib.*

30. (June, 1858.) Claims not founded on maritime liens have no standing in this court, in the exercise of its admiralty jurisdiction, and will be dismissed. *Stapp v. Steamboat Swallow*, 1 Bond, 189.

31. (Oct., 1860.) Under the Constitution of the United States and the legislation of Congress, jurisdiction in the enforcement of maritime liens is vested exclusively in the national judiciary. *McAllister v. Steamboat Sam Kirkman*, 1 Bond, 370.

32. (June, 1856.) The purchaser [of a vessel], under the statute lien, could not object to the jurisdiction of the admiralty court, as the suits and rights of the parties are distinct. *The John Richards*, 1 Biss. 106.

33. (1870.) When a question arises in judicial proceedings relative to the existence or validity of an organization claiming

to be the lawful government of a foreign country, the courts of the United States are bound by the decision of the executive power. Such a question is political, and not judicial, in its nature. *The Hornet*, 2 Abb. U. S. 35.

34. When a civil war is pending in a foreign country, between a portion of the people who adhere to a long-established government, and another portion who assert a new government, the courts of the United States cannot recognize such new government, or admit it or its agents or representatives to a standing as parties in judicial proceedings, until the executive power has publicly recognized such new government. *Ib.*

35. (Nov., 1840.) In that clause of the third article of the Constitution which extends the judicial powers to "all cases of admiralty and maritime jurisdiction," the terms "admiralty" and "maritime" are not synonymous. Each has its appropriate use. *The Huntress*, 2 Ware, 89.

36. In the grant of this jurisdiction, it is to be presumed that the words are used in the sense which they had in this country at the time when the Constitution was adopted. *Ib.*

37. The jurisdiction of the admiralty courts in this country at the time of the revolution and for a century before, was more extensive than that of the High Court of Admiralty in England. *Ib.*

38. The terms "admiralty" and "maritime" belong to the law of nations, as well as to our own domestic law, especially "admiralty." A court of admiralty is a court of the law of nations, and derives, in part, its jurisdiction from that law. *Ib.*

39. The Constitution may, therefore, refer to the law of nations for the meaning of these terms, as constituting part of our own law. *Ib.*

40. One of the rules acted upon by the convention, in the grant of powers to the national government, was to make the judicial co-extensive with the legislative power. The regulation and government of marine commerce is given to the legislature; and by taking the word "maritime," in this clause of the Constitution, in its usual and natural sense, the judicial power is made co-extensive with that of the legislature. *Ib.*

41. The contemporaneous construction of this clause in the Constitution, by the Federalist, by Congress, by a series of decisions of the Supreme Court, and by the uniform practice of

all the courts of the Union continued for sixty years, negatives the hypothesis that the admiralty and maritime jurisdiction, under the Constitution, is identical with that of the High Court of Admiralty in England; and consequently negatives the assumption that we are to look for the definition of these words of our Constitution to the statute laws of England as they are enforced by her courts. *Ib.*

42. (Sept., 1858.) The general maritime law was adopted by the Constitution of the United States, and no state can have a separate and distinct maritime law by itself. *Roberts v. Skolfield*, 3 Ware, 184.

43. This law governs the crews of the vessels of the United States, wherever they go, whether in a port of the Union or in a foreign port. *Ib.*

44. When the Constitution adopts the admiralty and maritime jurisdiction, it adopts also the law by which it is governed. *Ib.*

45. The power of the United States to govern seamen may also be derived from the commercial power. The power to regulate commerce includes that of navigation. *Ib.*

46. When a seaman engages in a commercial adventure, the laws of the United States follow him until the voyage is completed, whether in a foreign country, or the Union. *Ib.*

47. The commerce of the country is a unity, and wherever it goes it is governed and protected by the laws of the United States. *Ib.*

48. (Sept., 1827.) When admiralty jurisdiction has once attached, it is not divested by reason of any further acts done upon land in continuation of the maritime act which gave jurisdiction. *American Insurance Co. v. Johnson*, 1 Blatchf. & H. Adm. 9.

49. (Feb., 1828.) Where a master of a vessel was instructed, in his home port, to sell a cargo at the port of destination according to his judgment, and he landed the cargo there and proceeded to dispose of it on shore, — *Held*, that this was not a maritime contract cognizable in an admiralty court. *Waterbury v. Myrick*, 1 Blatchf. & H. Adm. 34.

50. Where a master, so employed, abandoned the sale of the cargo in order to effect a salvage service in a vessel, procured by pledging the proceeds of the cargo, — *Held*, that this was a

breach of contract for which no action lay in a court of admiralty. *Ib.*

51. (Oct., 1843.) In an action *in rem* against a vessel, the court cannot take cognizance of collateral equities to enforce them against parties *personally*, not made parties to the proceedings, where such decree may be prejudicial to their interests. *The Schooner Leonidas*, Olc. Adm. 12.

52. (Feb., 1849.) The authority of the District Court, in cases pending on appeal, extends only to the protection of parties against unreasonable delay. *The Josephine*, Abb. Adm. 481.

53. (Feb., 1870.) A question of jurisdiction should not be disposed of on motion, but on hearing. *Cushing v Laird*, 4 Ben. 70.

54. (1806.) I have had occasion to discuss, in several cases, the subjects of maritime jurisdiction. . . . It is certainly founded, for the most part, on the subject-matter, and not solely on the place of making the contract. *Gardner v. The Ship New Jersey*, 1 Pet. Adm. 231.

55. (1806.) This libel involves the general doctrine of liens for the building or preparation of ships in port, and the jurisdiction of the District Court.

By the Judiciary Act the District Court has exclusive original jurisdiction of all civil causes of admiralty and maritime cognizance. And it is somewhat remarkable that neither this act, nor the Constitution which it follows, limit the jurisdiction in any respect as to *place*. It is bounded only by the *nature* of the causes which the court is to decide. The jurisdiction of the court will not be better understood than by an inquiry into the original acceptation of admiralty powers; since they will be found to have been military authority, and entirely contradistinguished from civil judicial powers, and after judicial authority was superinduced, the difference between that which is styled admiralty and that which is called maritime jurisdiction is merely nominal.

A tribunal similar to the District Courts of the United States exists in every civilized country, peculiarly invested with the cognizance of all questions which result from the navigation of the sea, in which foreigners are or may be interested, and which are governed by the law of nations. Hence the authority and binding efficacy which has been generally conceded to the sen-

tences of admiralty courts. But independent of the peculiar jurisdiction which appertains to the special laws by which such courts are bounded and governed, (*Zouch, Jure Marit.* 382), other powers are added by the laws of the country in which such courts are established, and the general application of the term "admiralty jurisdiction" to municipal jurisdiction, thus added without a correct discrimination of their sources, renders it extremely difficult to ascertain the precise import of the terms "admiralty and maritime causes" as they are used in our Constitution and laws. In England the control of their own navy, in France the right of fishery, in Holland the preservation of the dykes and mounds, and in Denmark and Sweden the superintendence of the revenue, are confided to their courts of admiralty; and different as they are in their qualities, and local as they are in their nature, they are alike denominated "admiralty causes." The policy, justice, or general convenience of the local regulations of commercial states have been more or less adapted or extended to different countries, and what all adopted, all became equally interested to support. The civil law, the laws of Rhodes, and laws of Oleron, and the particular municipal regulations of towns and nations bordering on the sea (see 2 Bac. Abr. 184) became of course the common rule of decision. In England, where the jealousy of the civil law was most conspicuous, while its authority was openly denied, the principles of equity derived from that code influenced the decisions of their courts in as great a degree as in countries where it was adopted.

In all of which, from the books within my power, I can obtain any legal information, every contest or dispute between the owners and mariners, and the owners and builders or equippers of a ship for navigation on the sea, is of a maritime nature and cognizable in the admiralty. *Stevens v. The Sandwich*, 1 Pet. Adm. 233.

56. Within the admiralty jurisdiction are all affairs relating to vessels of trade, and the owners thereof as such, and all matters which concern owners and proprietors of ships as such; all causes of pawning, hypothecating, or pledging of the ship or vessel itself, or any part thereof, at sea, and whatever is of a maritime nature, either by way of navigation upon the seas, or negotiation at or beyond the sea in the way of maritime trade or commerce; also the nautic right which maritime persons have in ships, their

tackle, &c. ; likewise all causes of out-riggers, furnishers, owners, and part owners of ships, as such. *Ib.*

57. The court is of opinion that it has jurisdiction of the matter stated in this libel. *Ib.*

58. (1793.) The admiralty has cognizance of matters on land if they are incidents to those at sea. *Moxon v. The Brigantine Fanny*, 2 Pet. Adm. 324.

59. (1856.) At any stage of a proceeding in admiralty, until final hearing, the question of jurisdiction is open. *Ward v. Thompson*, Newb. Adm. 96.

60. (1856.) The District Courts of the United States derive their jurisdiction from the Constitution of the United States and the acts of Congress made in pursuance thereof. *Scott v. The Propeller Young America*, Newb. Adm. 101.

61. The second section of the third article of the Constitution of the United States, which declares that the judicial power of the courts of the United States "shall extend to all cases of admiralty and maritime jurisdiction," embraces those subjects, whether of contract or tort, which, at the time the Constitution was adopted, were the appropriate subjects of the jurisdiction of admiralty courts under the general maritime law. *Ib.*

62. The act of Congress of Feb. 26, 1845, did not enlarge the jurisdiction of the national courts as to questions of admiralty. *Ib.*

63. (March, 1860.) The District Courts of the United States having, under the Constitution and acts of Congress, exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, the courts of common law are precluded from proceeding *in rem* to enforce such maritime claims. *The Isabella*, 1 Brown, 96.

Bill of Lading.

1. (May, 1855.) Where a master fraudulently concerted with wreckers to strand his vessel, and they came to his relief, and the libellant, as owner of the cargo, paid a large sum of money for salvage, it was held that the admiralty had jurisdiction of a suit *in personam* against the owners, founded on the contract made by the master, as their agent, by the bill of lading, to convey the merchandise safely, dangers of the seas excepted. *Church v. Shelton*, 2 Curt. C. C. 271.

2. (April, 1844.) The contract created by the signing of a bill of lading for the carriage of goods from one seaport to another is a maritime one and within the jurisdiction of the admiralty. *Harrison v. Stewart*, Taney's Dec. 485.

3. (1870.) A contract by which a steamboat navigating the public inland waters of the United States engages, in consideration of freights to be earned, to carry for the libellant certain goods, and collect from the consignee the freight money and all charges, advances, and insurance on the goods, together with the price thereof, and, after deducting the freight money, to pay to the libellant the balance, is not unusual in its character, and is essentially a contract for a maritime service, of which the District Court has jurisdiction in admiralty, in a proceeding *in rem* against the boat. *The Hardy*, 1 Dill. 460.

4. (Nov., 1840.) A contract for the transportation of goods on the high seas, when it becomes a subject of litigation, is a case of maritime jurisdiction, within the meaning of that clause of the third article of the Constitution which extends the judicial powers to "all cases of admiralty and maritime jurisdiction." *The Huntress*, 2 Ware, 89.

5. (Oct., 1832.) A bill of lading is a contract maritime in its character, and within the jurisdiction of courts of admiralty, whether it be made on land or on the high seas. *The Gold Hunter*, 1 Blatchf. & H. Adm. 300.

6. (April, 1845.) *Quære*, whether an action *in rem* will lie by shippers against a vessel to recover back an overpayment of freight, made by them to the master. *The Bark Gentleman*, Olc. Adm. 111.

7. (June, 1846.) An action for the recovery of freight lies in admiralty in favor of the master of a ship against the consignee of cargo, equally *in personam* and *in rem*. *Thatcher v. McCulloh*, Olc. Adm. 365.

8. (Feb., 1838.) A libel dismissed, *pro forma*, for want of jurisdiction, in order to allow an immediate appeal, the question being on the jurisdiction over a case of contract under the general maritime law. [This was a libel for damages, for not delivering goods according to the provisions and terms of a bill of lading.] *Swaim v. The Brig Franklin*, Crabbe, 210.

Charter-Party.

1. (Dec., 1858.) The act of Congress passed on the 26th of February, 1845 (5 Stat. at L. 726), confines the admiralty jurisdiction of the federal courts, upon the lakes, to matters of contract and tort arising in, upon, or concerning steamboats and other vessels employed in the business of commerce and navigation between ports and places, in different states and territories, upon the lakes. *Allen v. Newberry*, 21 How. 244.

2. It does not extend, therefore, to a case where there was a shipment of goods from a port in a state, to another port in the same state, both being in Wisconsin. *Ib.*

3. And this is so, although the vessel was a general ship, and bound, upon the voyage in question, to Chicago, a port in the state of Illinois. *Ib.*

4. What would be done in a case of general average, the court does not now decide. *Ib.*

5. (Dec., 1858.) As this court has decided at the present term (see the preceding case of *Allen v. Newberry*,) that a contract of affreightment between ports and places within the same state, is not the subject of admiralty jurisdiction, so it now decides that a contract for supplies furnished to a vessel engaged in such a trade is subject to the same limitation. *Maguire v. Card*, 21 How. 248.

6. (Dec., 1859.) The admiralty jurisdiction of the courts of the United States extends to contracts of charter-party and affreightment. These are maritime contracts, within the true meaning and construction of the Constitution and act of Congress, and cognizable in courts of admiralty, by process either *in rem* or *in personam*. *Morewood v. Enequist*, 23 How. 491.

7. (Dec., 1866.) Contracts of affreightment are maritime contracts, over which the courts of admiralty have jurisdiction. Either party may enforce his lien by a proceeding *in rem* in the District Court. *The Eddy*, 5 Wall. 481.

8. (Dec., 1868.) In all cases where a maritime lien arises, the original jurisdiction to enforce it by a proceeding *in rem* is exclusive in the District Courts of the United States, as provided by the ninth section of the Judiciary Act of 1789. *The Belfast*, 7 Wall. 624.

9. Under an ordinary contract of affreightment, the lien of the shipper is a maritime lien; and a proceeding *in rem* to enforce it is within the exclusive original cognizance of the District Courts of the United States; albeit the contract be for transportation between ports and places within the same state, and all the parties be citizens of the same state; provided only that such contract be for transportation upon navigable waters to which the general jurisdiction of the admiralty extends. *Ib.*

10. (May, 1834.) The admiralty has jurisdiction in cases of charter-parties for foreign voyages, and may enforce, by a proceeding *in rem*, the maritime lien for freight under a charter-party. *Schooner Volunteer*, 1 Sumn. 551.

11. (May, 1837.) The admiralty has jurisdiction over charter-parties for foreign voyages and will enforce the lien thereof. *Certain Logs of Mahogany*, 2 Sumn. 589.

12. (Nov., 1837.) The admiralty has no jurisdiction over preliminary contracts leading to maritime contracts. *Schooner Tribune*, 3 Sumn. 144.

13. The jurisdiction of the admiralty does not depend upon the particular name or character of the instrument, but whether it imports to be a maritime contract. *Ib.*

14. An agreement for a charter-party to be *made* at a later period: *Held*, under the circumstances, to amount to a present charter-party, notwithstanding a more formal instrument was contemplated. *Ib.*

15. (May, 1858.) Whether a suit claiming damages for the non-fulfillment of a charter-party, on account of a refusal to furnish a specified cargo, can be sustained in admiralty, or whether the party must resort to his personal action for damages, as in other cases, *quære*. *Rich v. Parrott*, 1 Cliff. 56.

16. (May, 1861.) Admiralty has jurisdiction over a contract of affreightment between two ports in the same state, where, from the usual course of the voyage, a part of the navigation of the vessel is upon the high seas, and out of the jurisdiction of any particular state. *Carpenter v. Schooner Emma*, 1 Cliff. 633.

17. (May, 1827.) If a charter-party embraces stipulations merely of a personal nature, having no relation to a maritime service, in the safe carrying and delivery of the cargo, courts of admiralty have not jurisdiction to afford relief for a breach of such part of the contract. *Alberti v. Brig Virginia*, 2 Paine, 115.

18. Still less have they jurisdiction where such stipulations are contained in an instrument distinct from the charter-party. *Ib.*

19. The owner of a vessel under charter for the West Indies and a market, agreed by letter that, if a certain price could not be obtained at a designated port, the vessel should proceed to another; which agreement he violated. *Held*, that admiralty had not jurisdiction of the case. *Ib.*

20. (Sept., 1858.) A canal-boat, exclusively adapted to canal navigation, and having, of itself, no power, as respects navigation upon public waters, is not subject to a marine lien, in the admiralty, for a breach of a contract of affreightment. *The Ann Arbor*, 4 Blatchf. 205.

21. (April, 1871.) A District Court has jurisdiction in admiralty of a contract of affreightment, although the voyage contemplated begins and ends in one and the same state, and is prosecuted only on waters within such state, if the contract is to be performed on navigable waters. *The Elmira Shepherd*, 8 Blatchf. 341.

22. (Aug., 1878.) A cargo of oats was shipped on a canal boat lying in Buffalo Creek, a navigable stream flowing into Lake Erie, to be carried to New York by way of the Erie Canal and the Hudson River. The master of the boat signed a bill of lading for the cargo. While passing through the Erie Canal a part of the oats was feloniously abstracted from the cargo, with the knowledge and assent of the master. On the arrival of the boat in New York she was libelled by the consignee to recover the value of the oats not delivered. A mortgagee of the boat intervened, his mortgage being due, and defended the action, raising an objection to the jurisdiction, claiming a lien superior to that of the libellant, and claiming that the boat was not liable for the felonious action of the master. *Held*, —

(1.) That the admiralty had jurisdiction of an action to enforce such contract, although part of the service was to be performed on the Erie Canal.

(2.) That the admiralty had jurisdiction to enforce such contract against the boat, although she was built to navigate the canal and had no means of locomotion in herself.

(3.) That the lien of the claimant, under his mortgage, was subordinate to that of the libellant.

(4.) That the boat was liable for the taking of the oats. *The E. M. McChesney*, 15 Blatchf. 183.

23. (Oct., 1863.) A contract for the use of a barge at a stipulated rate is cognizable in admiralty, and a libel may be maintained against the steamboat using it. *The Dick Keys*, 1 Biss. 408.

24. (April, 1865.) The fact that a contract of affreightment is to be performed wholly between ports within the same state does not exclude it from the admiralty jurisdiction of the courts of the United States. The admiralty jurisdiction conferred by the Constitution upon these courts extends to all contracts of a maritime character to be performed upon navigable waters. *The Mary Washington*, Abb. U. S. 1.

25. (June, 1828) A libel on a charter-party for freight due is a cause of admiralty and maritime jurisdiction, and a court of admiralty has cognizance of the cause, provided the penalty is not demanded. *Drinkwater et al. v. The Freight and Cargo of Brig Spartan*, 1 Ware, 145.

26. The circumstance that the instrument is under seal does not take away the jurisdiction which the court has over it as a maritime contract. *Ib.*

27. The admiralty has a general jurisdiction to enforce maritime liens. *Ib.*

28. The ship-owners have a lien on goods for the freight due for maritime transportation, which may be enforced in the admiralty by a libel *in rem*. *Ib.*

29. And it is immaterial whether the contract is by a bill of lading, or a charter-party. *Ib.*

30. (March, 1872.) The District Court has full jurisdiction of all contracts of affreightment and of claims for indirect as well as direct damages for the violation of them. *The A. M. Bliss*, 2 Lowell, 103.

31. (Sept., 1872.) The admiralty has jurisdiction of a personal action by a charterer against the owner of a vessel for damages, in not proceeding to the port of lading. The jurisdiction does not depend upon the fact of the cargo, or some part of it, having been put on board the vessel. *Oakes v. Richardson*, 2 Lowell, 173.

32. *It seems* an action *in rem* would lie in such a case. *Ib.*

33. (June, 1875.) A cargo of oats was shipped on a canal-

boat, lying in the Buffalo River, a navigable stream flowing into Lake Erie, to be carried to New York by way of the Erie Canal and the Hudson River. The master of the boat signed a bill of lading for the cargo. While passing through the Erie Canal a part of the oats were feloniously abstracted from the cargo, with the knowledge and assent of the master. On the arrival of the boat in New York she was libelled by the consignee to recover the value of the oats not delivered. The mortgagee of the boat intervened, his mortgage being due, and defended the action, raising an objection to the jurisdiction, claiming a lien superior to that of the libellants, and claiming that the boat was not liable for the felonious action of the master.

Held, that the admiralty has jurisdiction of an action to enforce such a contract as this, although part of the service was to be performed on the Erie Canal.

That the admiralty has jurisdiction to enforce such a contract against the boat, although she was built to navigate the canal and had no means of locomotion in herself. *The Canal-Boat E. M. McChesney*, 8 Ben. 150.

34. Whether the admiralty has jurisdiction of collisions upon the Erie Canal, or contracts for the carriage of goods from place to place exclusively upon the Erie Canal, *quære*. *Ib*.

35. (Feb., 1877.) Where a libel *in personam* was filed to recover damages on a contract for the use of a steamboat for two excursion trips from the city of New York to Sandy Hook Light and return, and a motion was made to dismiss the libel for want of jurisdiction, — *Held*, that the contract set forth had all the legal characteristics of a charter-party, and was a maritime contract within the jurisdiction of the admiralty. *Marshall v. Pierrez*, 9 Ben. 39.

36. The cases of *The William Fletcher* (8 Ben. 537), and *The Druid* (1 Wm. Rob. 391), considered and distinguished. *Ib*.

37. (March, 1879.) A vessel was chartered to go from New York to ports in the West Indies and back to New York. The charter was expressed to be for the purpose of carrying a circus company and their necessary tents, clothing, horses, &c. It provided for the payment of charter money at the end of each month, and it bound the vessel "and the merchandise laden on board" to the performance of the charter. On the return of the vessel, while she was at Flushing, Long Island, and before

she was towed to her pier in New York, and before any of her cargo was discharged, the owner of the vessel filed a libel to recover a balance of charter money due, and attached the horses and paraphernalia of the circus company on board. The charterer excepted to the libel.

Held, that the libel was not prematurely filed, and the libellant was entitled to recover. *Fourteen Horses*, 10 Ben. 358.

38. (May, 1844.) Grain was shipped on board the *Ninetta*, on condition that no other cargo should be taken, and that the grain should be carried directly to Philadelphia without deviation. The master deviated and took additional cargo, whereby, it was alleged, the grain was damaged. This was such a case of violation of maritime contract as to give admiralty courts of the United States jurisdiction *in rem* therein. *Knox v. The Schooner Ninetta*, Crabbe, 534.

Cod Fishery.

1. (March, 1860.) A court of admiralty has jurisdiction to decree the bounty allowed to persons employed in the cod fishery, and a claim for this may be united with a claim for an account of the fish taken during the voyages. *The Lucy Anne*, 3 Ware, 253.

Consortship.

1. (Jan., 1845.) An agreement of consortship between the masters of two vessels engaged in the business known by the name of wrecking is a contract capable of being enforced in an admiralty court against property or proceeds in the custody of the court. *Andrews v. Wall*, 3 How. 568.

2. The case of *Ramsay v. Allegre*, 12 Wheat. 611, commented on and explained. *Ib.*

3. Such an agreement extends to the owners and crews, and is not merely personal between the masters. *Ib.*

4. If made for an indefinite period it does not expire with the mere removal of one of the masters from his vessel, but continues until dissolved upon due notice to the adverse party. *Ib.*

Cooperage.

1. (June, 1873.) The admiralty has jurisdiction of a contract, made between the master of a ship and a cooper, to put the cargo of the ship in landing order, the services being rendered partly on the ship and partly on the wharf, but before the delivery of the cargo. *The Bark Onore*, 6 Ben. 564.

Corporations.

1. (June, 1841.) It is well settled that a foreign corporation may sue in another jurisdiction. *Clarke v. N. J. Steam Navigation Co.*, 1 Story, 531.

2. (Nov., 1870.) A corporate body created by the laws of one state may maintain an action in the state or federal courts of another state. *Insurance Co. v. The C. D. Jr.*, 1 Woods, 72.

Decree of Court of Appeals.

1. (Feb., 1795.) The existence of the Court of Appeals terminated with the old government; this also was the case with the subordinate Court of Admiralty in the State of New Hampshire. The property was not restored to the libellants, nor were they compensated in damages; of course the decree in their favor remains unsatisfied. They had no remedy at common law; they had none in equity; the only forum competent to give redress is the District Court of New Hampshire, because it has admiralty jurisdiction. There they applied, and, in my opinion, with great propriety.

Judges may die, and courts be at an end; but justice still lives, and, though she may sleep for a while, will eventually awake and must be satisfied. *Penhallow v. Doane*, 3 Dall. 86.

Demurrage.

1. (Dec., 1871.) By the maritime law a master has a lien upon the cargo for demurrage, and such a lien may be enforced in the admiralty. *The Hyperion's Cargo*, 2 Lowell, 93.

2. This, although demurrage was not expressly stipulated for in the bill of lading. *Ib.*

District in which Case may be tried.

1. (Feb., 1809.) The trial of seizures, under the act of the 18th of February, 1793, "for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," is to be in the judicial district in which the seizure was made; without regard to the district where the forfeiture accrued. *Keene v. United States*, 5 Cranch, 304.

2. (Dec., 1861.) A suit *in rem* for a marine tort may be prosecuted in any district where the offending thing is found. *Propeller Commerce*, 1 Black, 574.

3. (Dec., 1864.) Libels *in rem* may be prosecuted in any district of the United States where the property is found. *The Slavers (Reindeer)*, 2 Wall. 384.

4. (May, 1818.) When a seizure is made within the limits of a judicial district, the District Court of that district has exclusive original cognizance thereof. And if brought into another district, the court will remit the property to the proper district. But the cognizance of seizures on the high seas belongs to any District Court into which the property is brought. *Sloop Abby*, 1 Mason, 360.

5. If a seizure be abandoned, no jurisdiction attaches to any court, unless there be a new seizure. But to constitute an abandonment there must be an unequivocal act of dereliction. *Ib.*

6. (Sept., 1871.) Jurisdiction *in rem* is exclusive in the District Courts; but the suit may be instituted in the district where the *res* is found, irrespective of where the injury for which satisfaction is sought occurred. *Killam v. Schooner Eri*, 3 Cliff. 456.

7. (Sept., 1810.) The jurisdiction of the District Courts, derived from that clause in the Judiciary Act declaring that they shall have "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction, including all seizures under laws of impost, navigation, or trade of the United States, where the seizures are made on waters which are navigable from the sea, by vessels of ten or more tons burthen, within their respective districts; and of all seizures on land or other waters than as aforesaid made, and of all suits for penalties and forfeitures incurred under the laws of the United States," does not

extend to cases of libel for seizures made in another district from that where the proceedings are instituted. But the District Court of the district where the seizure is made has exclusive jurisdiction. *Brig Little Ann*, 1 Paine, 40.

8. (Feb., 1872.) The jurisdiction of the District Court for the Eastern District of New York, in this case, sustained, although the vessel proceeded against was found and attached in the waters of the county of New York. *The Pennsylvania*, 9 Blatchf. 451.

9. (April, 1804.) The District Court of Pennsylvania, exercising admiralty jurisdiction, cannot proceed against a captor, into whose hands the proceeds of the capture have never arrived; the same being in the hands of the officer of another court, in another state. *Carson's Executors v. Jennings*, 1 Wash. 129.

10. A court of admiralty can only proceed *in rem* against the thing itself, or *quasi in rem* against the proceeds thereof. *Ib.*

11. The execution of the sentence of a superior court can only be by a court of admiralty having the thing, which is ordered to be restored, within its power. *Ib.*

12. (April, 1818.) The District Courts of the United States, in exercising admiralty jurisdiction, though unlimited as to the subject-matter over which they have cognizance, are nevertheless limited in point of locality, as well by the general principles of law as by the express provisions of the eleventh section of the Judiciary Act of 1789. [They have no authority to issue their process into another district.] *Ex parte Graham*, 4 Wash. 211.

13. (May, 1869.) A party having a maritime lien may, even after the filing of a petition in bankruptcy by the owner, seize the vessel under a libel in another district, and the latter court has jurisdiction to hear and determine the lien. *The Ironsides*, 4 Biss. 518.

14. (Sept., 1849.) In suits *in rem*, the *locus rei sitæ* gives the jurisdiction, for it is only in the courts of that country that a *jus in re* can be directly enforced. *The Ada*, 2 Ware, 408.

Duties.

1. (Feb., 1830.) A suit cannot be sustained in admiralty *in rem*, to enforce the payment of duties to the United States. *The Waterloo*, 1 Blatchf. & H. Adm. 114.

Executor.

1. (Feb., 1871.) Libel *in personam* for a marine tort. Northern District of Illinois. An executor cannot be compelled to appear and answer in a state where he has not taken out letters testamentary, nor done any official act. *Security Ins. Co. v. Taylor*, 2 Biss. 446.

2. His power and liability are local, and the fact that process is served upon him while within the jurisdiction of this court does not make him amenable to its process in his representative capacity. *Ib.*

3. A *scire facias* in this court to bring in the executors of a Wisconsin estate will be dismissed. *Ib.*

Foreigners.

1. (Dec., 1869.) Where a lien exists by the maritime law of foreign jurisdictions, our admiralty has jurisdiction to enforce it here, even though all the parties be foreigners. Its enforcement is but a question of comity. *The Maggie Hammond*, 9 Wall. 435.

2. [The law of Scotland, and the statute of 24 & 25 Victoria here cited.]

Redress may be had in our admiralty courts, in the case of a master thus there acting, although the ship have been a foreign vessel, and the shipment made between foreign countries, as Scotland and Canada. And this is so whether the statute be regarded as giving a maritime lien, or only a right to sue the ship. *Ib.*

3. (May, 1836.) A court of admiralty has jurisdiction over controversies of a maritime nature between foreigners who are transiently within the jurisdiction of the court. *The Bee*, 1 Ware, 336.

4. But the court is not bound to take jurisdiction of a case in which all the parties are foreigners. *Ib.*

5. Suits *in rem* are local, and the court within whose jurisdiction the thing is situated is the proper forum, though all the parties in interest are foreigners. *Ib.*

6. There is an exception to the general rule, when the thing

has been brought within the jurisdiction of the court by a violation of the sovereign rights of another nation. *Ib.*

7. (Jan., 1848.) The maritime courts of this country and of England are not without jurisdiction over actions, whether *in rem* or *in personam*, between foreigners. *Davis v. Leslie*, Abb. Adm. 123.

8. But as a general rule, both the American and English courts will decline to entertain such actions, excepting where it is manifestly necessary that they should do so to prevent a failure of justice. *Ib.*

9. (June, 1870.) A court of admiralty has the right to decline to entertain jurisdiction, where all the parties are foreigners resident abroad. *Muir v. Brig Brisk and Alfred Morine*, 4 Ben. 252.

10. (April, 1877.) Jurisdiction of the defendant having been duly acquired, admiralty courts have power to entertain suits *in personam* and to determine the matter in controversy, where the parties are foreigners of different nationalities. *Thomassen v. Whitwell*, 9 Ben. 113.

11. When courts of admiralty with general admiralty powers have been constituted without any prohibition by the government against entertaining suits between foreigners, it is doubtful whether it is within the discretion of the judge of such a court to decline to hear a cause of collision arising on the high seas between vessels of different nationalities. *Ib.*

12. Delay in requesting the court to decline jurisdiction on the ground that the parties to the suit are foreigners, when during the period of the delay the position of the parties has changed in any material degree, and especially by action taken in court without objection, may afford a special reason, if any is needed, for declining the application. *Ib.*

13. Where the respondent is represented by an agent in this state, and has property within the territorial jurisdiction of the court, which has been seized under process with an attachment clause, after which the respondent has entered a general appearance and has obtained the release of his property by giving a stipulation to abide the event, and has proceeded to take depositions *de bene esse* on his own behalf, and has filed his answer to the libel, joining issue upon merits, and where testimony has been also taken by the libellants, the court will not refuse to

entertain the action, nor will it grant an application to forbid the further prosecution of the action on the ground that libellants and respondent are aliens, neither domiciled nor temporarily present in the United States at or since the commencement of the action. *Ib.*

14. (1788.) The claim of the libellant, who is a French subject, a seaman claiming his wages from a ship which had changed her voyage from that for which he originally entered, and who was shipped in France, will most properly be determined by the marine ordinances of the country to which he belongs, and under which he engaged in the service of the vessel. *Moran v. Baudin*, 2 Pet. Adm. 416.

15. (1793.) The brigantine Fanny, owned by subjects of the king of Great Britain, was captured as prize within five miles of Cape Henry, by the armed French schooner Sans Culottes, and brought into the port of Philadelphia. The British owners filed a libel in the District Court for the District of Pennsylvania, praying restitution of the vessel and cargo and damages for detention. The captain of the French schooner put in a plea to the jurisdiction of the court, setting forth that he was commissioned as captain of the schooner, by the French republic, to attack all the enemies of the said republic wherever he might find them, &c.; that so being commissioned, he took as prize the said brig, &c., belonging to British subjects, at open war with the French republic. The court dismissed the libel for want of jurisdiction. *Moxon v. The Brigantine Fanny*, 2 Pet. Adm. 309.

16. (1793.) The brig Betsey, belonging to the libellants, citizens of the United States, bound from St. Bartholomews to Amsterdam, with a neutral cargo on board, was taken by a French privateer and brought into the port of Philadelphia. The District Court ordered her to be restored, and awarded damages to the libellants and the owners of the cargo. *Hollingsworth v. The Brigantine Betsey*, 2 Pet. Adm. 330.

17. (1801.) It has been my general rule not to take cognizance of disputes between the masters and crews of foreign ships. I have commonly referred them to their own courts. In some very peculiar cases I have afforded the seamen assistance, to protect them against oppression and injustice; and in cases where the voyage was broken up or ended here, I have compelled the payment of wages. Masters, too, have always been assisted in

recovering deserters, and reducing to obedience perverse and rebellious mariners; these must be restored only to the ship from which they abscond. *Willendson v. The Forsoket*, 1 Pet. Adm. 197.

18. (1804.) The brigantine *Neptune*, belonging to the libellants, citizens of the United States, was captured by a French privateer and condemned by a court held on board a French vessel at sea, and, having been purchased by the respondent, was brought into the port of Philadelphia. The District Court ordered her to be restored to her former owners. *Jolly v. The Brigantine Neptune*, 2 Pet. Adm. 345.

19. (1804.) The brig *Neptune*, the property of citizens of the United States, had been purchased by the libellant after a condemnation by an unauthorized tribunal; and, having been brought into the port of Philadelphia, she was here claimed by the former owners, and was restored to them by the District Court. *Coulon v. The Brig Neptune*, 2 Pet. Adm. 356.

20. (1805.) British seamen belonging to two vessels in the harbor of Charleston, apply to this court for a discharge and wages, though the voyage is not ended. The court refused to interfere (without deciding against its jurisdiction in all cases), principally because these men might have had redress before a tribunal of their own country, in Surinam. *Thomson et al. v. Ship Nanny*, Bee Adm. 217.

21. (Dec., 1859.) Though a court of admiralty is not bound to take jurisdiction of controversies growing out of contracts between foreigners having a domicile in this country, it may lawfully exercise it, and ought to do so, where justice requires it. *The Sailor's Bride*, 1 Brown, 68.

22. It has jurisdiction in a case of salvage rendered by an American tug to a British vessel in Canadian waters. *Ib.*

General Average.

1. (Jan., 1849.) Where a vessel was run on shore by the captain, in order to save the lives of those on board, and for the preservation of the cargo, by which act the vessel was totally lost, but the cargo saved and delivered to the consignee, a libel *in personam*, filed by the owner of the vessel against the consignee of the cargo (and the result would be the same if filed

against the owner of the cargo) for a contribution by way of general average, cannot be sustained in the admiralty courts of the United States. *Cutler v. Rae*, 7 How. 729.

2. Those courts have jurisdiction wherever the vessel or cargo is subject to an absolute lien created by the maritime law, and will follow property subject to such a lien into the hands of assignees. The lien, in such cases, does not depend upon possession. *Ib.*

3. But in cases of general average the lien is a qualified one, depends upon the possession of the goods, and ceases when they are delivered to the owner or consignee. *Ib.*

4. Whatever may be the liability of the owner after he has received his cargo, it is founded upon an implied promise to contribute to the reimbursement of the owner of the lost vessel, which promise is implied by the common law, and not by the maritime law. *Ib.*

5. The case is therefore beyond the jurisdiction of courts of admiralty, and the libel must be dismissed. *Ib.*

6. (March, 1854.) The court in admiralty will not entertain jurisdiction in cases of general average, unless all the parties in interest are before it. *The Congress*, 1 Biss. 42.

7. (April, 1845.) Admiralty has jurisdiction of cases of general average upon losses at sea. *Mutual Safety Ins. Co. v. The Cargo of the Brig George*, Olc. Adm. 89.

Marine Insurance.

1. (Dec., 1870.) As to *contracts*, the true criterion whether they are within the admiralty and maritime jurisdiction is their nature and subject-matter, as, whether they are maritime contracts, having reference to maritime service, maritime transactions, or maritime casualties, without regard to the place where they were made. *Insurance Co. v. Dunham*, 11 Wall. 1.

2. In view of these principles it was held that the contract of marine insurance is a maritime contract within the admiralty and maritime jurisdiction, though not within the exclusive jurisdiction of the United States courts. *Ib.*

3. The case of *De Lovio v. Boit* (2 Gallison, 398), affirmed. *Ib.*

4. (Oct., 1815.) The admiralty has jurisdiction over all mar-

itime contracts, wheresoever the same may be made or executed, and whatever may be the form of the stipulations. The admiralty has also jurisdiction over all torts and injuries committed upon the high seas, and in ports or harbors within the ebb and flow of the tide. The like causes are within the jurisdiction of the District Courts of the United States by virtue of the delegation of authority "in all civil causes of admiralty and maritime jurisdiction." *De Lovio v. Boit*, 2 Gall. 398.

5. A policy of insurance is a maritime contract, and therefore of admiralty jurisdiction. *Ib.*

6. Courts of common law have a jurisdiction, concurrent with the admiralty, over maritime contracts. *Ib.*

7. (Oct., 1822.) *Held*, that a court of admiralty has jurisdiction over policies as marine contracts, but not over contracts leading to policies; that it cannot reform a policy by the antecedent contract; that this part belongs to a court of equity. *Andrews v. Essex F. & M. Ins. Co.*, 3 Mason, 6.

8. (May, 1842.) The doctrine of *De Lovio v. Boit* (2 Gallison, 398), respecting the jurisdiction of the District Courts of the United States, as courts of admiralty, over policies of insurance, affirmed. *Hale v. Washington Ins. Co.*, 2 Story, 176.

9. (May, 1855.) In this circuit [Mass.] it must be taken to be settled that the admiralty jurisdiction over policies of insurance exists, until some contrary decision shall be made by the Supreme Court. *Gloucester Ins. Co. v. Younger*, 2 Curt. C. C. 322.

10. (May, 1854.) The admiralty has jurisdiction over policies of insurance. *Younger v. Gloucester Marine Ins. Co.*, 1 Sprague, 236.

11. (April, 1845.) Assurers acquire, by abandonment to them of property insured and satisfaction of their policies, all the present rights and remedies of the assured thereto, together with the *spes recuperandi*. Those rights and remedies may be presented or proceeded upon in admiralty courts by the assurers in their own names. *Mutual Safety Ins. Co. v. The Cargo of the Brig George*, Olc. Adm. 89.

Marine Torts.

1. (Feb., 1816.) The courts of this country have no jurisdiction to redress any supposed torts committed on the high seas, upon the property of its citizens, by a cruiser regularly commissioned by a foreign and friendly power, except where such cruiser has been fitted out in violation of our neutrality. *L'Invincible*, 1 Wheat. 238.

2. (Feb., 1825.) The courts of the United States, proceeding as courts of admiralty and maritime jurisdiction, have jurisdiction in cases of maritime torts, *in personam* as well as *in rem*. *Manro v. Almeida*, 10 Wheat. 473.

3. (Jan., 1847.) In cases of tort, or collision, happening upon the high seas, or within the ebb and flow of the tide, as far up a river as the tide ebbs and flows, though it may be *infra corpus comitatus*, courts of admiralty of the United States have jurisdiction. *Waring v. Clarke*, 5 How. 441.

4. The meaning of the clause in the ninth section of the Judiciary Act of 1789, saving to suitors, in all cases, a common-law remedy when the common law is competent to give it, is, that in cases of concurrent jurisdiction in admiralty and at common law, the jurisdiction in the latter is not taken away. *Ib.*

5. (Dec., 1853.) Where a libel was filed, claiming compensation for injuries sustained by a passenger in a steamboat, proceeding from Sacramento to San Francisco, in California, the case is within the admiralty jurisdiction of the courts of the United States. *Steamboat New World v. King*, 16 How. 469.

6. (Dec., 1859.) The jurisdiction of courts of admiralty in torts depends entirely on locality, and this court has heretofore decided that it extends to places within the body of a county. The term "torts" includes wrongs suffered in consequence of the negligence or malfeasance of others, where the remedy at common law is by an action on the case. *Philadelphia, Wilmington, & Baltimore Railroad Co. v. Philadelphia & Havre de Grace Steam Towboat Co.*, 23 How. 209.

7. Hence, where a railroad company employed contractors to build a bridge, and for that purpose to drive piles in a river, and, owing to the abandonment of the contract, the piles were left in the river, in such a condition as to injure a vessel when sailing

on her course, the railroad company were responsible for the injury. *Ib.*

8. (Dec., 1865.) Where a damage done is done wholly upon land, the fact that the cause of the damage originated on water subject to the admiralty jurisdiction does not make the cause one for the admiralty. *The Plymouth*, 3 Wall. 20.

9. Hence, where a vessel lying at a wharf, on waters subject to admiralty jurisdiction, took fire, and the fire, spreading itself to certain store-houses on the wharf, consumed these and their stores, it was held not to be a case for admiralty proceeding. *Ib.*

10. (Oct., 1881.) A writ of prohibition will not be issued to a District Court of the United States sitting in admiralty, wherein a libel claiming damages was filed against a steamer for drowning certain seamen of a vessel with which, as she was navigating the public waters of the United States, the steamer, as was alleged, wrongfully collided. *Ex parte Gordon*, 14 Otto, 515.

11. That court, having jurisdiction of the steamer and of the collision which is the subject-matter of the suit, is competent to decide whether, under the circumstances, it may estimate the damages which one person has sustained by the killing of another. *Ib.*

12. (Oct., 1881.) *Ex parte Gordon* (*supra*, p. 515) reaffirmed, the doctrines there announced being applicable, although the amount involved in the suit below is not sufficient to give this court appellate jurisdiction. *Ex parte Ferry Company*, 14 Otto, 519.

13. (Oct., 1881.) The term "torts," when used in reference to admiralty jurisdiction, embraces not only wrongs committed by direct force, but such as are suffered in consequence of negligence or malfeasance, where the remedy at common law is by an action on the case. *Leathers v. Blessing*, 15 Otto, 626.

14. The jurisdiction in admiralty is not ousted by the fact that, when the wrong was done on the vessel by the negligence of the master, she had completed her voyage and was securely moored at the wharf where her cargo was about to be discharged. *Ib.*

15. (Oct., 1823.) The admiralty has jurisdiction of personal torts and wrongs committed on a passenger, on the high seas, by the master of the ship. *Chamberlain v. Chandler*, 3 Mason, 242.

16. It is immaterial whether such torts be by direct force, as trespasses, or consequential injuries. *Ib.*

17. (May, 1827.) A father may maintain a suit in the admiralty for a tortious abduction or seduction of his minor son, on a voyage on the high seas, in the nature of an action *per quod servitium amisit*; for it is a continuing tort. *Plummer v. Webb*, 4 Mason, 380.

18. (Oct., 1834.) The admiralty jurisdiction as to torts depends upon locality, and is limited to torts committed on the high seas, or, at farthest, to torts committed on waters within the ebb and flow of the tide. *Thomas v. Lane*, 2 Sumn. 1.

19. (Oct., 1853.) The admiralty will not entertain suits for merely nominal damages in cases of personal torts not involving any subject-matter beyond such a claim for damages. *Barnett v. Luther*, 1 Curt. C. C. 434.

20. (Sept., 1817.) The District Courts, possessing all the powers of courts of admiralty, whether considered as instance or prize courts, have jurisdiction of all cases of marine trespass or tort. *The Amiable Nancy*, 1 Paine, 111.

21. (June, 1867.) The admiralty may be styled the humane providence which watches over the rights and interests of those "who go down to the sea in ships and do their business on the great waters." Its jurisdiction for marine torts may be said to be co-extensive with the subject. It depends on the locality of the wrong, not upon its extent, character, or the relations of the person injured. *The Highland Light*, Chase, 150.

22. The statute of Maryland furnishes a clear right and a plain remedy, and the right may be enforced in this court by admiralty process. *Ib.*

23. (Jan., 1876.) A court of admiralty has jurisdiction to try the question of unlawful seizure of maritime property for taxes or duties. *The North Cape*, 6 Biss. 505.

24. (1873.) The District Court, as a court of admiralty, has jurisdiction of a cause wherein the libellant seeks to recover damages caused to his vessel by a pier erected by the respondent, without legal authority, within the navigable channel of the Mississippi River. *Northwestern Union Packet Company v. Atlee*, 2 Dill. 479.

25. (Jan., 1859.) Where a tort is a continued act and not separable, and a portion is committed on land and the remainder on the high seas, the jurisdiction of it attaches to the common-law courts. *Barque Yankee v. Gallagher*, McAll. 467.

26. If the tortious act originates in port, and is not a perfected wrong until the vessel leaves the port, it is a continuous act, and travels with the tort-feasor and the injured party during the whole voyage, and comes within the jurisdiction of the admiralty, upon the principles enunciated in certain cases, that if a thing be taken on the high seas and brought to land, it is appropriate to a court of admiralty to decide the question as a marine tort. *Ib.*

27. (Dec., 1874.) The District Courts of the United States, as courts of admiralty, have jurisdiction of torts committed on the high seas, without reference to the nationality of the vessel on which they are committed, or that of the parties to them. *Bernhard v. Creene*, 3 Sawyer, 230.

28. Such jurisdiction will, in the discretion of the court, be declined in suits between foreigners, where it appears that justice would be as well done by remitting the parties to their home forum. *Ib.*

29. But where the suit is between foreigners who are subjects of different governments, and therefore have no common home forum, the jurisdiction will not be declined. *Ib.*

30. (Feb., 1880.) Although an action may not lie at common law to recover damages for the death of a person, it will at the civil law, and therefore *semble* that it will in admiralty. *Holmes v. Railway Co.*, 6 Sawyer, 262.

31. A marine tort is one that occurs on any public navigable water of the United States, whether caused by a wrongful act or omission; and the proper District Court, as a court of admiralty, has jurisdiction of a suit to recover damages therefor. *Ib.*

32. The jurisdiction of the national courts does not depend upon the origin of the rights of the parties; and where a state statute gives a right, the same may be asserted or enforced in such courts whenever the citizenship of the parties or the nature of the subject will permit. *Ib.*

33. The right given by sec. 367 of the Oregon Civil Code to an administrator to recover damages on account of the death of his intestate, from the party by whose act or omission such death was caused, may be enforced in the national courts. *Ib.*

34. When a passenger on the railway ferry-boat plying across the Wallamet River between East Portland and Portland was drowned by reason of the negligence of the owner of the boat or its servants, a marine tort was committed, for which a suit may

be maintained in the District Court by the administrator of the deceased, to recover the damages given therefor by sec. 367 of the Oregon Civil Code. *Ib.*

35. (Dec. 1825.) The decisions of the court of common law in England, under the statute of 13 and 15 of Richard II., upon the jurisdiction of the admiralty, are not binding on the courts of this country. *Steele v. Thacher*, 1 Ware, 85.

36. The grant of admiralty jurisdiction by the Constitution of the United States has been uniformly held, both by the legislative and judicial departments of the government, to be more extensive than that allowed by the courts of common law, under the construction of these statutes, to the High Court of Admiralty in England. *Ib.*

37. If a tort be committed partly on land and partly on the high seas, if it be one continued act, the admiralty has jurisdiction over the whole matter. *Ib.*

38. A parent may maintain a libel in the admiralty for the wrongful abduction of his child, being a minor, and carrying him beyond the sea. *Ib.*

39. And this action may be maintained although the child, at the time of the abduction, was not an inmate of the father's family, and although the child may have been principally left to support himself by his own labor, unless it appears that the father has abandoned all care of his child. *Ib.*

40. (Aug., 1837.) A person who is a slave by the law of his domicile may maintain an action in his own name, in a country where slavery is not allowed, for a personal tort committed within that jurisdiction. *Polydore v. Prince*, 1 Ware, 410.

41. (Jan., 1868.) *It seems* that the District Court has jurisdiction of an action *in rem* against the schooner, by one who was injured on board the tug, for personal injuries caused by a collision. *The Willard Saulsbury*, 1 Lowell, 195.

42. (March, 1832.) Whether admiralty has jurisdiction over a personal tort committed on board a vessel in a harbor where the tide ebbs and flows, *quære*. *Borden v. Hiern*, 1 Blatchf. & H. Adm. 293.

43. (Feb., 1836.) Courts of admiralty do not encourage suits *in personam* for personal torts committed upon tide-waters within the ports and harbors of a state. *Thomas v. Gray*, 1 Blatchf. & H. Adm. 493.

44. *Aliter*, when a tort committed upon tide-waters gives a right of action *in rem*, or when a tort is not the sole cause of action, but is connected with other matters which are within admiralty cognizance. *Ib.*

45. (Nov., 1843.) This court has jurisdiction on the instance side over maritime torts committed within the ebb and flow of tide. *The Sloop Martha Ann*, Olc. Adm. 18.

46. (Nov., 1868.) Where a canal-boat was taken in tow, with other boats, by a steamboat, at Albany, to be towed to the foot of North Monroe Street, in the city of New York, and, on their arrival there, the steamboat ran in near the dock to drop off the canal-boat, and signalled her to drop off, which she failed to do, and the steamboat kept on with her, there being many vessels at anchor in the harbor, leaving only a narrow channel near the piers, down which the tow passed till near the Battery, when, owing to the sudden anchoring of two vessels ahead, the steamboat was compelled to stop, and the canal-boat was carried, by a strong north-east wind and an ebb tide, against Pier 2, North River, and sunk, and the owner of the cargo filed a libel against the steamboat to recover the damages, — *Held*, that the court of admiralty had jurisdiction of the case as one of a tort committed on navigable waters, even though both vessels were navigating between ports of the same state. *The Steamboat Brooklyn*, 2 Ben. 547.

47. (May, 1869.) Where a libel was filed against a vessel upon a contract to carry cargo on board of her from New York city to Troy, in the same state, to recover damages for an injury, from negligence, received by the cargo on the voyage, the owners of the vessel and cargo all being residents of New York state, — *Held*, that the cause was one of admiralty jurisdiction. *The Barge Leonard*, 3 Ben. 263.

48. (March, 1871.) The owners of a ship filed a libel against a tug, alleging that, while their ship was lying at anchor ready for sea, the tug came alongside, against the remonstrance of the ship's officers, and took off eight sailors and their baggage, whereby new men had to be obtained, and the ship was detained; and they sought to recover the demurrage and the advance wages paid to the deserters. *Held*, that if the facts constituted a maritime tort cognizable in the admiralty, yet, in order to hold the tug liable, the libellants must show knowledge

or notice to those in charge of the tug that they were committing a wrongful act. *The Steamtug G. H. Starbuck*, 5 Ben. 53.

49. (Nov., 1876.) Under a contract between H. and the proper officer of the United States, H. was engaged in furnishing the materials for, and constructing the pier for, a lighthouse to be erected at the Middle Ground, Stratford Shoals, in Long Island Sound. He had carried the work up about four feet above high-water mark, and had inside of the ring of stone work, and supported by four wire guys anchored outside of the rip-rap wall, a derrick which he used in the work. This derrick was run into on the night of Sept. 2, 1875, by the schooner M. W., which struck one of the guys, and both the schooner and the derrick were injured, and cross-libels were filed to recover damages. The shoal on which the pier was being built was out of the fairway, and for more than two years before it would have been impossible for any vessel to sail over the spot, because of loose stones and rip-rap placed there as a foundation for the pier before H. began his work. No light had been placed by H. on the structure. He had asked permission to place one, but it had been refused by the engineer-in-chief of the Light-house Department. *Held*, that it must be presumed that jurisdiction over the place where the pier was being erected had been ceded to the United States. *The Schooner Maud Webster*, 8 Ben. 547.

50. That the court had no jurisdiction of the claim of H. for injury to the derrick, the damage not being done upon the water. *Ib.*

51. The locality of an injury is the locality of the thing injured and not of the agent by which the injury is done. *Ib.*

52. (May, 1879.) The steam-tug B., having three barges in tow, went into the cove at the foot of Sixty-fifth Street, East River, to take up a fourth. In coming in, her engine caught on the center and she drifted towards the rocks. The pilot, as soon as possible, turned her head out of the cove and went ahead, but before he could get out, she was carried by the tide so near the point as to run against the corner of a floating bath-house which was moored to the shore there. *Held*, that the admiralty had jurisdiction of a libel filed by the owner of the bath-house against the tug, to recover the damages caused by the tug. *The Steamtug M. R. Brazos*, 10 Ben. 435.

53. (1785.) Admiralty has jurisdiction of a libel by owners

against their captain, for satisfaction of the damages which they have sustained in consequence of a wrongful capture made by him. *Dean v. Angus*, Bee, Adm. 369.

54. (1794.) Damages will be assessed in the District Court, upon a libel *in personam*, for trespass or tort committed upon the high seas. *Martins v. Ballard & Talbot*, Bee, Adm. 51.

55. (1794.) Admiralty courts have jurisdiction to proceed by attachment *in rem* for marine torts. *M'Grath v. Sloop Candallero*, Bee, Adm. 64.

56. (Jan., 1872.) An action will not lie in admiralty against a vessel to recover for damage done by her to a bridge thrown over a navigable stream. *The Neil Cochran*, 1 Brown, 162.

57. (Feb., 1872.) An action will not lie in admiralty against a vessel to recover damages done by her to a wharf projecting into navigable water. *The Ottawa*, 1 Brown, 356.

58. Wharves are but improvements or extensions of the shore, and injuries done to them, no matter by what agency, are injuries done on land, and do not constitute maritime torts for which an action in the admiralty can be maintained. *Ib.*

Navigable Waters.

1. (Jan., 1837.) The admiralty has no jurisdiction over a vessel not engaged in maritime trade and navigation; though on her voyages she may have touched at one terminus of them, in tide water, her employment having been substantially on other waters. The true test of its jurisdiction in all cases of this sort is, whether the vessel is engaged, substantially, in maritime navigation, or in interior navigation and trade, not on tide waters. *Steamboat Orleans v. Phœbus*, 11 Pet. 175.

2. (Dec., 1851.) The act of Congress passed on the 26th of February, 1845 (5 Stat. at Large, 726), extending the jurisdiction of the District Courts to certain cases upon the lakes, and navigable waters connecting the same, is consistent with the Constitution of the United States. *Propeller Genesee Chief v. Fitzhugh*, 12 How. 443.

3. It rests upon the ground that the lakes and navigable waters connecting them are within the scope of admiralty and maritime jurisdiction, as known and understood in the United States when the Constitution was adopted. *Ib.*

4. The admiralty and maritime jurisdiction granted to the federal government by the Constitution of the United States is not limited to tide waters, but extends to all public navigable lakes and rivers where commerce is carried on between different states or with a foreign nation. *Ib.*

5. (Dec., 1851.) The extent of the admiralty and maritime jurisdiction of the courts of the United States, as explained in the preceding case, again affirmed. *Fretz v. Bull*, 12 How. 466.

6. (Dec., 1857.) The admiralty jurisdiction of the courts of the United States extends to cases of collision upon navigable waters, although the place of such collision may be within the body of a county of a state, and may be above the flux and reflux of the tide. *Jackson v. Steamboat Magnolia*, 20 How. 296.

7. The District Courts exercise this jurisdiction over fresh water rivers "navigable from the sea," by virtue of the Judiciary Act of 1789, and not as conferred by the act of 1845, which extends their jurisdiction to the great lakes and waters "not navigable from the sea." *Ib.*

8. (Dec., 1859.) In the case of a collision between a steamboat and a flat boat, on the Yazoo River more than two hundred miles from its mouth, it was held that the collision took place within the admiralty jurisdiction of the courts of the United States. *Nelson v. Leland*, 22 How. 48.

9. (Dec., 1861.) The admiralty jurisdiction is not taken away by the fact that the collision or other tort was committed within the body of a county. *Propeller Commerce*, 1 Black, 574.

10. Locality is the test of jurisdiction. If the collision occurred on those navigable waters which empty into the sea, or into the bays and gulfs which form a part of the sea, the maritime courts have jurisdiction. *Ib.*

11. (Dec., 1866.) The doctrine of the case of *The Genesee Chief*, 12 Howard, 443, that the admiralty jurisdiction of the Federal courts, as granted by the Constitution, is not limited to tide water, but extends wherever vessels float and navigation successfully aids commerce, approved and affirmed. *The Hine v. Trevor*, 4 Wall. 555.

12. The grant of admiralty powers to the District Courts of the United States, by the ninth section of the act of Sept. 24, 1789, is coextensive with this grant in the Constitution as to the character of the waters over which it extends. *Ib.*

13. (Dec., 1868.) Since the decision (A. D. 1851) in the *Genesee Chief* (12 Howard, 443) which decided that admiralty jurisdiction was not limited in this country to tide waters, but extended to the lakes and the waters connecting them; the previous act of 1845 (5 Stat. at Large, 726), entitled “An act *extending* the jurisdiction of the District Courts to *certain* cases upon the lakes and navigable waters connecting the same,” and which went on the assumption (declared in the *Genesee Chief* to be a false one) that the jurisdiction of the admiralty was limited to tide waters, has become inoperative and ineffectual, with the exception of the clause which gives to either party the right of trial by jury when requested. The District Courts, upon whom the admiralty jurisdiction was exclusively conferred by the Judiciary Act of 1789, can therefore take cognizance of all civil causes of admiralty jurisdiction upon the lakes and waters connecting them, the same as upon the high seas, and upon bays and rivers navigable from the sea. *The Eagle*, 8 Wall. 15.

14. The court observes also, that, from the reasons given why the act of 1845 has become inoperative, the clause (italicized in the lines below of this paragraph) in the ninth section of the Judiciary Act of 1789, which confers exclusive original cognizance of all civil causes of admiralty jurisdiction upon the District Courts, “*including all seizures under laws of impost, navigation, or trade of the United States, where the seizures are made on waters which are navigable from the sea, by vessels of ten or more tons burden, within their respective districts, as well as upon the high seas,*” is equally inoperative. *Ib.*

15. (Dec., 1870.) The admiralty and maritime jurisdiction of the United States is not limited by the statutes or judicial prohibitions of England.

First. The *locus* or territory of maritime jurisdiction where *torts* must be committed, and where business must be transacted in order to be maritime in their character, extends not only to the main sea, but to all the navigable waters of the United States, or bordering on the same, whether land-locked or open, salt or fresh, tide or no tide. *Insurance Co. v. Dunham*, 11 Wall. 1.

16. (May, 1829.) Where an arm of the sea, or creek, haven, basin, or bay, is so narrow that a person standing on one shore can reasonably discern, and distinctly see, by the naked eye,

what is being done on the opposite shore, the waters are within the body of a county. *United States v. Grush*, 5 Mason, 290.

17. In such waters *it seems* that the admiralty and common-law courts have concurrent jurisdiction. *Ib.*

18. (Oct., 1842.) Where the larger portion of a voyage is upon tide-water the jurisdiction of the admiralty is not ousted by the fact that the residue (the terminus, each way, of the voyage) is upon water of a different character; as, for example, on a canal. *The Robert Morris*, 1 Wall. Jr. 33.

19. In the case here reported the tide navigation compared with that of the canal in the ratio of twenty-three to fifteen and five sixteenths. *Ib.*

20. (Oct., 1852.) The District Court has admiralty jurisdiction over the Ohio River. *McGinnis v. Steamboat Pontiac*, 5 McLean, 359.

21. (Oct., 1870.) The District Court of the United States for the Southern District of Ohio, as a court of admiralty, has territorial jurisdiction in case of a seizure on the Ohio side of the Ohio River at high-water mark. *Steamboat Cheeseman v. Two Ferry-boats*, 2 Bond, 363.

22. The court also has admiralty jurisdiction over the Ohio, as a navigable river, by virtue of sec. 9 of the Judiciary Act of 1789, as construed by the Supreme Court of the United States. *Ib.*

23. Ferry-boats propelled by steam, and used as such between two cities in different states, are within the scope of congressional legislation, under the grant of power to regulate commerce "among the states," and are subject to the jurisdiction of the national courts in the exercise of their admiralty powers. *Ib.*

24. (Oct., 1853.) The admiralty jurisdiction on the western lakes and rivers is not limited to cases within the act of Feb. 20, 1845. *The Flora*, 1 Biss. 29.

25. The District Court may resort to the act of Sept. 24, 1789, to sustain its jurisdiction. *Ib.*

26. (May, 1868.) The admiralty jurisdiction of the national courts extends over the Ohio River. *The Lewellen*, 4 Biss. 156.

27. The United States District Courts have exclusive original jurisdiction of all civil causes of admiralty and maritime cognizance. *Ib.*

28. (Aug., 1872.) A vessel plying between several points on the Mississippi River, on opposite sides, and within a distance of six miles, is amenable to the admiralty, even though her main business be that of a ferry-boat between points on opposite sides of the river. *The Gate City*, 5 Biss. 200.

29. The fact that such boat was owned and run by a company possessing a ferry franchise does not change the character of the service. *Ib.*

30. The width of a stream or length of a voyage is no criterion by which to determine the character of the service, nor the question of admiralty jurisdiction. *Ib.*

31. (June, 1872.) The United States District Court for the District of Oregon has concurrent jurisdiction over the Columbia River. *The Annie M. Smull*, 2 Sawyer, 226.

32. (Sept., 1827.) Admiralty jurisdiction, when administered under the restrictions of the English jurisprudence, is co-extensive with the ebbing and flowing of the tide. *American Insurance Co. v. Johnson*, 1 Blatchf. & H. Adm. 9.

33. (May, 1874.) A vessel in a basin at Jersey City, which communicates directly with the Hudson River, lying at some piles about 40 feet from the dock, is subject to the process of the United States District Court for the Southern District of New York. *The Steamboat Argo*, 7 Ben. 304.

34. (Jan., 1878.) In a suit *in rem* in admiralty, in the District Court of the United States for the Southern District of New York, against a vessel, she was attached by the marshal on April 1, 1875, under process in the suit, while she was afloat in the navigable waters of the Hudson River lying west of Manhattan Island and to the south of the mouth of Spuyten Duyvil Creek, and where the tide ebbed and flowed, she being fastened by means of a line to a dock at Jersey City, in the State of New Jersey, and outside low water mark, said wharf projecting into the navigable waters of the Hudson River lying west of Manhattan Island and to the south of the mouth of Spuyten Duyvil Creek. *Held*, that the place where the vessel was arrested was within waters subject to the jurisdiction of said court. *The Schooner L. W. Eaton*, 9 Ben. 289.

35. The jurisdiction of said court over said *locus in quo*, in such a suit, existed prior to the agreement of Sept. 16, 1833, between New York and New Jersey, which is set forth in the

act of June 23, 1834 (4 Stat. 708), and nothing in that agreement or in that act restricted such jurisdiction. *Ib.*

36. Secs. 541 and 542 of the Revised Statutes do not have the effect to alter such jurisdiction so that it does not extend to such *locus in quo*. *Ib.*

37. (1804.) Jurisdiction of District Courts of the United States ascertained by act of Congress of 1794, to extend to a marine league from the coasts or shores, extending to low-water mark. Shoals covered with water are not part of the coast or shore. *Soult v. Corvette L'Africaine*, Bee, Adm. 204.

38. (1852.) The jurisdiction of this court in cases of admiralty does not rest upon the statute of 1845, but upon the Constitution of the United States. It is not limited to tide waters, but embraces the lakes and navigable rivers through which commerce is carried on between different states or with foreign nations. *Franconet v. The Propeller F. W. Backus*, Newb. Adm. 1.

39. (1856.) The term "navigable waters," used in the act of Congress of Feb. 26, 1845, is not to be understood in the same sense as "natural streams," and must be held to include an artificial communication such as the Welland Canal. *Scott v. The Propeller Young America*, Newb. Adm. 101.

40. (Oct., 1852.) The admiralty jurisdiction of the District Court of the United States extends to all the large public navigable rivers and lakes of the United States. The Ohio River is one of that class. *McGinnis v. The Steamboat Pontiac*, Newb. Adm. 130.

41. (March, 1853.) Admiralty jurisdiction extends to the lakes and navigable rivers of the United States, the same above as below tide-water. *Eads & Nelson v. The Steamboat H. D. Bacon*, Newb. Adm. 274.

42. (Nov., 1853.) Since the decision of the Supreme Court of the United States, in the case of *The Genesee Chief v. Fitzhugh et al.*, 12 Howard, 443, the admiralty jurisdiction has been considered as fully established on the Mississippi River, and all other rivers as far as they are navigable from the ocean for vessels of ten or more tons burden. *Williams v. The Barge Jenny Lind*, Newb. Adm. 443.

43. The establishment of such a jurisdiction necessarily carries with it all its incidents. Salvage services are as much the subject

of admiralty jurisdiction as damages arising from collisions or other maritime torts. *Ib.*

44. (March, 1860.) Admiralty and maritime jurisdiction is possessed by the District Courts of the United States on the western lakes and rivers, under the Constitution and the act of 1789, independent of the act of 1845, and unrestricted thereby. *Revenue Cutter No. 1*, 1 Brown, 76.

45. (Feb., 1873.) The waters of the Welland Canal, as now used for international commerce, are within American admiralty jurisdiction. The Suez and other canals, and all the improved navigation of the world, have been, and from the nature of their use should be, as much subject to admiralty jurisdiction as waters in natural channels. *The Avon*, 1 Brown, 170.

46. While a natural thoroughfare, although wholly within the dominion of a government, may be passed by commercial ships *of right*, yet the nation which constructs an artificial channel may annex such conditions to its use as it pleases. *Ib.*

47. When it may be inferred that the maritime law sought to be applied is excluded by the *lex loci*, the remedy *in rem* should be denied. If from the circumstances a contrary presumption arises, the principle of the maritime law involved should be enforced. *Ib.*

48. It is not enough *per se* to deprive a court of admiralty of jurisdiction, that collision happens where there is municipal power to exclude the maritime rule. It must further appear that it has actually been done, and this the record in this case fails to show. The mere absence of a tribunal to enforce the maritime law has never been admitted as sufficient evidence of intention to exclude it. *Ib.*

49. No argument can be drawn from the fact that the Welland Canal is a *tideless* water and that therefore the authorities which sustain admiralty jurisdiction over torts and contracts in foreign waters do not extend the maritime law over it. Admiralty courts have taken jurisdiction wholly irrespective of the fact of a tide. *Ib.*

50. Inapplicability of the *lex loci contractus*, the *lex rei sitæ*, and the *lex loci delicti*, where obligations growing out of international commerce are to be adjudicated with reference to the maritime law, considered. *Ib.*

51. (June, 1871.) Saginaw River, though wholly within the

State of Michigan, is a public navigable stream, and within the admiralty jurisdiction. *The General Cass*, 1 Brown, 334.

Part Owners of Vessels.

1. (Nov., 1859.) Where the owner of one fourth of a whale ship, before any preparation had been made for a new voyage, gave notice to the owners of the major part that he would not pay anything toward outfits or expenses for a new voyage, but did not say in terms that he should not dissent from the voyage, or apply for security for the return of his quarter part, until the vessel was nearly ready for sea; but it did not appear that the major part owners had been misled or subjected to any loss by such delay, — *Held*, that the libellant was entitled to security, by stipulation for the return of the vessel, and that such return should be to the port of New Bedford, to which the vessel belonged. *The Marengo*, 1 Sprague, 506.

2. The libellant's part of the returned outfits will not be included in the estimated value of his part of the vessel, when he verbally requests the court not to include them. *Ib.*

3. Whether they could be included if desired by the libellant, *quære. Ib.*

4. (April, 1866.) A court of admiralty has no jurisdiction of a claim by a part owner dissenting from a voyage, for the use or destruction, during the voyage, of his share of the outfits. The remedy is in equity. *The Marengo*, 1 Lowell, 52.

5. (Nov., 1872.) A court of admiralty has no power to decree a sale of a vessel, at the instance of the owners of a minority interest, except, perhaps, as the result of the failure of the owners of the majority interest to give security for the safe return of the vessel. *The Schooner Ocean Belle*, 6 Ben. 253.

6. A court of admiralty has power to decree a sale in case of a dispute between owners of equal moieties as to the employment of the vessel. *Ib.*

7. A court of admiralty has no jurisdiction in matters of accounting between part owners of a vessel. *Ib.*

8. A court of admiralty cannot require the owners of a majority interest in a vessel to give a bond to the minority interest to cover indebtedness of the vessel to the minority owners, or to indemnify them against loss in her future employment. *Ib.*

9. (Oct., 1878.) The admiralty has jurisdiction to order the sale of a vessel on the application of the owners of one half of her, in case of a disagreement between them and the owners of the other half. But such disagreement must be such as prevents the present employment of the ship, and the owners asking for a sale must either propose a different employment of the ship, or, if they merely object to the voyage or the master proposed by the other moiety, their objection must be based on reasonable grounds. *The Ship Annie H. Smith*, 10 Ben. 110.

10. (Nov., 1828.) Where one of two part owners who have equal interests in a vessel declares his intention of taking her to sea, and offers to make stipulation for her safe return, a court of admiralty will not, on an application of the other part owner, grant a compulsory order of sale, or permit him to send her to sea with a master appointed by himself. *Davis and Brooks v. The Brig Seneca*, Gilp. 10.

11. The provisions of the French commercial law which authorize a compulsory sale of a vessel in case of partners disagreeing about the use of her are to be regarded rather as municipal regulations of that country than as the general law of admiralty. *Ib.*

12. The English courts of admiralty claim and exercise no power to compel a sale of a vessel on the application of part owners who object to a contemplated voyage, but they will require stipulations in favor of the dissenting owner of a vessel, for her safe return. *Ib.*

13. (May, 1834.) It seems to be the better opinion that one part owner of a vessel has not a lien on the share of another part owner for a balance which may be due to him. *Patton and Dickson v. The Schooner Randolph*, Gilp. 457.

Passengers.

1. (Dec., 1866.) A contract for the transportation of passengers, by a steamship on the ocean, is a maritime contract, and there is no distinction in principle between it and a contract for the like transportation of merchandise. The same liability attaches upon its execution, both to the owner and the steamship. *The Moses Taylor*, 4 Wall. 411.

2. (Oct., 1850.) The owner of a ship bound from New York

to California agreed with C., at New York, to take him as a cabin passenger with his luggage at \$300; not more than fifty cabin passengers to be received, for which reason the fare was raised from \$250, the usual charge; state rooms to be fitted up between decks on each side with a free passage between, disencumbered with freight, for ventilation and exercise; and the vessel to sail on the 5th of January. C. paid his passage-money on the 2d. He lived in Massachusetts, and prepared for the voyage at considerable expense, and went to New York at the time appointed for sailing, when he found that the state-rooms had no space between them for ventilation or exercise, in consequence of the increased number of them, and that seventy-two cabin passengers had been engaged, many at \$275 each, so that the vessel was overcrowded with passengers and cargo, and incommodious and dangerous to health. C. refused to embark, and demanded back his passage-money, which was refused. He then, on the 20th of January, filed a libel *in rem* against the ship for the return of the passage-money and for his damages. *Held*, that the admiralty had jurisdiction of the case, and that the ship was liable. *The Pacific*, 1 Blatchf. 569.

3. The contract was an entirety. It is wholly of admiralty cognizance, or else it is not at all within it, as there cannot be a divided jurisdiction. *Ib.*

4. The stipulations in the contract as to the fitting up of the ship, &c., were incidental and subsidiary to the main purpose of the contract, which was to convey the libellant and his luggage to California. Those stipulations have nothing to do with determining the nature of the contract, or with the question of jurisdiction. *Ib.*

5. The contract was an entirety; the failure to comply with any part of it went to the whole. The libellant had a right to demand a strict compliance with every part, and, in case of refusal, to consider the contract as broken. *Ib.*

6. In case of a contract maritime in its nature and subject, it is not essential, in order to give jurisdiction to the admiralty *in rem*, that the vessel should have entered on the performance, or that the breach should have occurred in the course of the voyage. *Ib.*

7. (Feb., 1873.) A child, who was a passenger on a steamship from Liverpool to New York, was poisoned on the passage and

died, as was alleged, in consequence of negligence on the part of the officers of the ship. The father, having been appointed administrator of the child, filed a libel against the vessel to recover damages, to which libel exceptions were filed by the claimants of the vessel. *Held*, that the cause of action arose on contract, and survived to the administrator, and might be sued for *in rem*. *The Steamship City of Brussels*, 6 Ben. 370.

8. (July, 1879.) F. filed a libel against a steamship, alleging that he took passage on her for Hamburg, with his wife and son, and that when two days out from New York, the master compelled them to leave the state-room in the first cabin and confined them, during the voyage, in another room which was unfit for them. It appeared that the child was taken with an attack of small-pox or varioloid, and that the master of the ship directed the child to be removed to the steward's room, telling the father and mother that if they went with it they must stay and would not be allowed to come into the first cabin again, and accordingly they were all removed and were not allowed thereafter to come to the first cabin. *Held*, that the court had jurisdiction of the cause of action. *The Steamship Hammonia*, 10 Ben. 512.

9. (May, 1830.) A contract between a passenger and the master of a vessel for the passage is a personal contract not cognizable in the admiralty. *Brckett et al. v. The Brig Hercules*, Gilp. 184.

10. (Dec., 1854.) When the baggage of a passenger had been stolen from her room on board a passenger steamer, the admiralty court has jurisdiction over the action brought to recover its value. *Walsh v. The Steamboat H. M. Wright*, Newb. Adm. 494.

Public Vessel.

1. (Feb., 1812.) A public vessel of war, of a foreign sovereign, at peace with the United States, coming into our ports, and demeaning herself in a friendly manner, is exempt from the jurisdiction of the country. *Schooner Exchange v. M'Faddon*, 7 Cranch, 116.

2. (Aug., 1879.) A steam-tug, the property of a municipal corporation invested with certain powers of local government in a city, and used exclusively by an executive department of such municipal government, as an instrument for performing duties

imposed on it by law, is not liable to seizure in a suit *in rem* against such steam-tug in admiralty in the District Court, brought to recover damages for an act of the tug, while actually engaged in public service under the orders of such department. *The Fidelity*, 16 Blatchf. 569.

3. A stipulation filed to obtain a release of the tug is not a waiver of the question as to the original liability of the tug. *Ib.*

4. (Feb., 1878.) A steam-tug owned by a municipal corporation, and employed exclusively in the service of a department of such corporation, in performing the public duties of the government of the municipality, is not liable to seizure in a suit *in rem* in admiralty for a maritime tort. *The Steam-tug Fidelity*, 9 Ben. 333.

Rafts, Barges, Lighters, &c.

1. (April, 1855.) The coal barges, arks, or flat boats used on many rivers to transport merchandise down stream, and usually broken up and sold for lumber at the end of their voyage, are not "ships or vessels," subject to admiralty jurisdiction on such waters. *Jones v. The Coal Barges*, 3 Wall. Jr. 53.

2. Although the extension of admiralty jurisdiction over our fresh-water public rivers seems to have been assumed rather from the decision of the Supreme Court in *The Propeller Genesee Chief v. Fitzhugh*, decided in 1851, than from the act of Congress of Feb. 26, 1845, which speaks only "of the lakes and navigable waters connecting said lakes," yet it does not follow that the admiralty may assume jurisdiction over everything floating on such waters. On the contrary, the restraints of that act should be applied to all the jurisdiction now assumed over such waters, to wit, "to vessels over twenty tons burden, licensed and enrolled for the coasting trade," and the pleadings in such cases should contain such averment in order to give jurisdiction. *Ib.*

3. (Nov., 1853.) Rafts anchored in the stream, although it be a public navigable river, are not the subject-matter of admiralty jurisdiction, in cases where the right of property or possession is alone concerned; they are not vehicles intended for the navigation of the sea or arms of the sea; they are not recognized as instruments of commerce or navigation by any act of Congress; they are piles of lumber, and nothing more, fastened to-

gether and placed upon the water until suitable vehicles are ready to receive and transport it to its destined port; and any assistance rendered to these rafts, even when in danger of being broken up and swept down the river, is not a salvage service, in the sense in which that word is used in courts of admiralty. *Tome v. Four Cribs of Lumber*, Taney's Dec. 533.

4. (April, 1876.) A court of admiralty has not jurisdiction to try the question of title to certain logs which have been incorporated into a raft and floated down a public navigable river. *Gastrel & Raymond v. A Cypress Raft*, 2 Woods, 213.

5. (March, 1876.) A libel *in rem* cannot be maintained for services in navigating a raft of logs. *A Raft of Cypress Logs*, 1 Flipp. 543.

6. (May, 1873.) *It seems* that admiralty jurisdiction could not be sustained against a raft. *Quere. The W. H. Clark*, 5 Biss. 295.

7. (Oct., 1869.) A steamboat had been dismantled, and stripped of her boiler, engine, and paddle-wheels, and fitted up as a saloon and hotel, and used as such for some months, and was being towed to another place, to be there used in a similar way, and, while so being towed, got ashore, and it was necessary to lighten her by pumping, and a steam propeller was employed for that purpose, whose owner afterwards filed a libel against the hulk, to recover compensation for such pumping. *Held*, that the hulk was not, at the time, engaged in commerce and navigation, in such a sense as to be liable *in rem* in admiralty. *The Steamboat Hendrick Hudson*, 3 Ben. 419.

8. Whether it would be liable for a tort or injury committed by it, *quere. Ib.*

9. The libel must be dismissed for want of jurisdiction, without costs. *Ib.*

10. (June, 1871.) If the business or employment of a vessel appertain to travel or trade and commerce on the water, it is subject to the admiralty jurisdiction, whatever may be its size, form, capacity, or means of propulsion. *The General Cass*, 1 Brown, 334.

11. Such jurisdiction extends to lighters employed in carrying lumber out to vessels lying in deep water. *Ib.*

12. The fact that these lighters are not enrolled or licensed does not affect the question of jurisdiction. *Ib.*

Res Judicata.

1. (Dec., 1866.) Where a matter is directly in issue and adjudged in a court of common law, that judgment may be set up as an estoppel in a court of admiralty. *Goodrich v. The City*, 5 Wall. 566.

2. (Oct., 1875.) The decree of a District Court, dismissing a cross-libel for want of merit, from which no appeal was taken, determines the question raised by such cross-libel; but does not dispose of the issues of law or of fact involved in the original suit. *The Dove*, 1 Otto, 381.

3. By such dismissal, without appeal, both parties to the cross-libel are remitted to the pleadings in the original suit; and every issue therein is open on appeal, as fully as if no cross-libel had ever been filed. *Ib.*

4. (Nov., 1871.) The fact that a good defense existed against a decree of condemnation, but which was not pleaded before decree, will not avoid the decree. *Griswold v. Connolly*, 1 Woods, 193.

5. (April, 1845.) A cross-action cannot be maintained in this court, which seeks a re-trial of matters already adjudicated between the parties. *The Schooner Navarro*, Olc. Adm. 127.

6. Nor is this rule varied when the subject-matter is the same, although one action be *in rem* and the other *in personam*, the thing sued being regarded in admiralty as substituted for its owner, and, when subject to his responsibilities, entitled at the same time to his immunities. *Ib.*

7. (June, 1879.) Libels were filed against a tug to recover for the loss of three barges while in tow. D. appeared as claimant and owner of the tug, and set up that, after the loss in question, the tug was libeled in the District Court of the Eastern District by C., to recover a claim which was a valid lien on her, and that under a decree in that suit by default the tug was sold, and that D. became the purchaser, and that by such sale, the liens of the libellants, if any they had on the tug, had been discharged. The cause coming on for trial, and D. having offered in evidence the judgment record in the case of C. against the tug, the libellants objected to it as void for various alleged irregularities, and also offered evidence to prove that D. was

master of the tug at the time of the loss of the boats, and also evidence by which they claimed to show that the sale of the tug in the suit of C. was collusive. *Held*, that although the libel in C.'s suit appeared to have been sworn to before a notary public, whose seal was not attached to his certificate, the absence of such seal did not vitiate the process issued on the libel, under the rules of the court requiring a sworn libel previous to the issuing of process against a vessel. Under the statute of 1876, chap. 304, the seal was not necessary to a due verification. At most its absence was only an irregularity which could not be availed of after decree in another proceeding before another court. *The Tug E. W. Gorgas*, 10 Ben. 460.

8. That it was not essential to the jurisdiction in C.'s suit that the marshal should continuously retain the vessel in his custody. *Ib.*

9. That there is no rule or statute requiring the exclusion of Sundays in the fourteen days required before the return of process *in rem*. *Ib.*

10. That the objections to the jurisdiction of the District Court of the Eastern District in C.'s case must therefore be overruled. *Ib.*

Seizure on Land.

1. (Feb., 1823.) In cases of seizures made *on land*, under the revenue laws, the District Court proceeds as a court of common law, according to the course of the Exchequer, on information *in rem*, and the trial of the issue of fact is to be by jury; but in cases of seizures *on waters navigable from the sea by vessels of ten or more tons burthen*, it proceeds as an instance court of admiralty, by libel, and the trial is to be by the court. *The Sarah*, 8 Wheat. 391.

2. A libel charging the seizure to have been made *on water*, when in fact it was made *on land*, will not support a verdict and judgment or sentence thereon, but must be amended or dismissed. The two jurisdictions and the proceedings under them are to be kept entirely distinct. *Ib.*

3. (Nov., 1871.) A seizure of property under the confiscation acts, made by the marshal upon the written order of the United

States attorney, is sufficient to give the court jurisdiction of the res. *Bragg v. Lorio*, 1 Woods, 209.

4. (Feb., 1840.) Where goods in the custody of the United States are being proceeded against by them, an irregularity in the seizure cannot avail the claimants in such suit. *United States v. Twenty-five Cases of Cloths, &c.*, Crabbe, 356.

Ship-Builders.

1. (Dec., 1857.) The admiralty jurisdiction of the courts of the United States does not extend to cases where a lien is claimed by the builders of a vessel for work done and materials found in its construction. *People's Ferry Co. v. Beers*, 20 How. 393.

2. Whether the District Courts can enforce a lien in such cases, where the law of the state where the vessel was built gave a lien for its construction, is a question which the court does not now decide. *Id.*

3. (Dec., 1859.) Where a steamboat was built at Louisville, in Kentucky, and the persons who furnished the boilers and engines libeled the vessel in admiralty in the District Court of the United States for the Eastern District of Louisiana, that court had no jurisdiction of the case. *Roach v. Chapman*, 22 How. 129.

4. A contract for building a ship, or supplying engines, timber, &c., is not a maritime contract. This court so decided in 20 Howard, 400, and now reaffirms that decision. *Id.*

5. The state law of Kentucky, which creates a lien in such a case, cannot confer jurisdiction on the courts of the United States; and the preceding decisions of this court do not justify an inference to the contrary. *Id.*

6. (May, 1858.) District Courts have no jurisdiction of a libel *in personam* against the builder, to recover damages for the non-completion of a ship, according to a written contract under which the ship was built and sold, for defects in the construction, discovered after the ship was sold and employed on a voyage. *Cunningham v. Hall*, 1 Cliff. 43.

7. The jurisdiction of the District Courts is not limited to the particular subjects over which it was exercised in the English courts of admiralty, when the Federal Constitution was adopt-

ed; neither does it extend, under the Constitution, and laws of Congress, to all cases which would fall within its cognizance, according to the civil law and the practice and usages of Continental Europe. *Ib.*

8. The intent and meaning of the provision of the Federal Constitution, that the judicial power shall extend to all cases of admiralty and maritime jurisdiction, must be determined in a great measure from the maritime law, as it was known and understood in the jurisprudence of the states when the Constitution was adopted. *Ib.*

9. Discussion of the extent of the admiralty jurisdiction in the United States. *Ib.*

10. (Oct., 1858.) Contracts for the building of sea-going ships are maritime. *The Richard Busteed*, 1 Sprague, 441.

11. Liens on domestic ships given by a state statute, in cases of contracts maritime in their nature, may be enforced in the District Courts of the United States in admiralty. *Ib.*

12. (March, 1869.) A court of admiralty has no jurisdiction of a suit *in rem* against a ship, to recover for work, labor, and materials done and furnished towards the building of the ship, even though the law of the state gives a lien upon the ship therefor. *The Ship Norway*, 3 Ben. 163.

13. (March, 1871.) A contract for building a ship or supplying materials for her construction is not a maritime contract. *Foster v. Ellis*, 5 Ben. 83.

14. (1806.) In England a shipwright may sue in the admiralty for building a ship for navigation on the sea, and for repairing a ship. But as the laws of this state provide for shipwrights and material-men at the port of outfit, and also regulate domestic pilotage and the sums due and recoverable here, on that account I have generally referred parties exhibiting such claims to the state jurisdictions, wishing to avoid all collisions and conflicts in such cases. *Gardner v. The Ship New Jersey*, 1 Pet. Adm. 227.

15. (Aug., 1834.) The subject-matter of the controversy generally determines the question of admiralty jurisdiction. *Davis v. A New Brig*, Gilp. 473.

16. The provisions of the act of Sept. 24, 1789, which give to the District Courts original cognizance of all civil causes of admiralty and maritime jurisdiction, comprehend all maritime

contracts, and those which relate to the navigation, business, or commerce of the sea, and the building, repairing, and supplying of vessels. *Ib.*

17. Workmen, material-men, and persons furnishing repairs and necessities to a vessel, in a port of a state to which she does not belong, have a lien on the vessel, which they may enforce by a suit *in rem* in the admiralty. *Ib.*

18. Workmen, material-men, and persons building a vessel, or furnishing her with repairs or necessities, in a port or state to which she belongs, have no implied lien on the vessel, and cannot enforce one by a suit *in rem* in the admiralty, unless such a lien is given under the provisions of a state law. *Ib.*

19. (Feb., 1835.) The debts for which a lien on a vessel is given are those contracted by the master and owner for work and materials used in building, repairing, or furnishing her; the persons to whom such a lien is given are the workmen and material-men who furnish the work and materials so used. *Harper & Bridges v. The New Brig, Gilp*. 536.

20. (May, 1842.) Admiralty courts have jurisdiction to enforce the claims of mechanics and material-men for work and materials furnished in fitting vessels for maritime service, —

(1.) Where such repairs have been made or materials furnished to a foreign ship, or to a ship in the ports of a state to which she does not belong, and,

(2.) In the case of a domestic ship, when, by the local laws of the state where the repairs are made, or materials furnished, the creditor has a lien on the vessel. *Tree v. The Brig Indiana, Crabbe*, 479.

21. A vessel was enrolled as belonging to a port in New Jersey, and a share in her was subsequently sold to a person in Philadelphia, who thereupon became managing owner and obtained a new enrolment for her as belonging to Philadelphia. A libel being filed in this court for work and materials furnished, both before and after the new enrolment, it was decided that as to the charges which accrued before the new enrolment the court had jurisdiction over her as a foreign vessel, but after the new enrolment she became a domestic vessel, and as the lien which the local law of Pennsylvania gave for work and materials furnished, had been, under that law, divested by her making subsequent voyages, this court had no jurisdiction as to the charges which accrued subsequently to the second enrolment. *Ib.*

22. (1781.) A shipwright cannot sue in the admiralty for his contract wages for building a ship or vessel designed for navigation on the high seas. *Clinton v. The Brig Hannah*, Bee, Adm. 419.

23. (June, 1874.) A hull, completed at the place of launching, received a small cargo of flour as ballast, and was towed with her spars on deck to another port, where her masts were stepped and the vessel put in condition for navigation. *Held*, that the work was done in *building* the vessel, and that admiralty had no jurisdiction. *The Iosco*, 1 Brown, 495.

State Statutes.

1. (Feb., 1809.) The legislature of a state cannot annul the judgments nor determine the jurisdiction of the courts of the United States. *United States v. Judge Peters*, 5 Cranch, 115.

2. (Jan., 1837.) The local laws of a state can never confer jurisdiction on the courts of the United States. They can only furnish rules to ascertain the rights of the parties, and thus assist in the administration of the proper remedies where the jurisdiction is vested by the laws of the United States. *Steamboat Orleans v. Phœbus*, 11 Pet. 175.

3. (Dec., 1866.) A statute of California, which authorizes actions *in rem* against vessels for causes of action cognizable in the admiralty, to that extent attempts to invest her courts with admiralty jurisdiction. *The Moses Taylor*, 4 Wall. 411.

4. The judicial power of the United States is, in some cases, unavoidably exclusive of all state authority, and in all others it may be made so at the election of Congress. *Id.*

5. (Dec., 1866.) The act of Feb. 26, 1845, is a limitation of the powers granted by the act of 1789, as regards cases arising *upon the lakes, and navigable waters connecting said lakes*, in the following particulars:—

(1.) It limits the jurisdiction to vessels of twenty tons burden and upwards, enrolled and licensed for the coasting trade, and which are employed in commerce and navigation between ports and places in different states.

(2.) It grants a jury trial if either party shall demand it.

(3.) The jurisdiction is not exclusive, but is expressly made concurrent with such remedies as may be given by state laws. *The Hine v. Trevor*, 4 Wall. 556.

6. The grant of original admiralty jurisdiction by the act of 1789, including as it does all cases not covered by the act of 1845, is exclusive, not only of all other federal courts, but of all state courts. *Ib.*

7. Therefore state statutes which attempt to confer upon state courts a remedy for marine torts and marine contracts, by proceedings strictly *in rem*, are void; because they are in conflict with that act of Congress, except as to cases arising on the lakes and their connecting waters. *Ib.*

8. These statutes do not come within the saving clause of the 9th section of the act of 1789, concerning a common-law remedy. *Ib.*

9. But this rule does not prevent the seizure and sale, by the state courts of the interest of any owner in a vessel, by attachment or by general execution, when the proceeding is a personal action against such owner, to recover a debt for which he is personally liable. *Ib.*

10. Nor does it prevent any action which the common law gives for obtaining a judgment *in personam* against a party liable in a marine contract or a marine tort. *Ib.*

11. (Dec., 1872.) A statute of a state, giving to the next of kin of a person crossing upon one of its public highways with reasonable care, and killed by a common carrier, by means of steamboats, an action on the case for damages for the injury caused by the death of such person does not interfere with the admiralty jurisdiction of the District Courts of the United States as conferred by the Constitution and the Judiciary Act of Sept. 24, 1789; and this is so, even though no such remedy enforceable through the admiralty existed when the said act was passed, or has existed since. *Steamboat Company v. Chase*, 16 Wall. 522.

12. (Oct., 1880.) Under the act of the legislature of the state of New York, passed May 8, 1869 (Laws of New York, of 1869, chap. 738, p. 1785), H. brought a suit in the Supreme Court of New York against T. and W., to foreclose a possessory lien for repairs on a vessel owned by T., to which H. had made repairs, on the delivery of her to him by T. for that purpose. W. held a mortgage on the vessel. The vessel was sold under a decree of foreclosure in the suit and was bought by H. Afterwards a suit in admiralty *in rem* for wages was brought against the vessel in the District Court. T. filed a claim on the vessel

as owner, and so did H. *Held*, that the state court had no jurisdiction to enforce the lien, because the contract was a maritime contract and the remedy was not a common-law remedy or one which the common law was competent to give, and the jurisdiction was exclusive in the District Court of the United States, under section 563 of the Revised Statutes of the United States, and that the claim of H., as owner of the vessel, must be stricken out. *The B. F. Woolsey*, 18 Blatchf. 344.

13. The nature of a lien arising out of a *locatio operis faciendi*, considered. *Ib.*

14. (Oct., 1849.) The District Court of the United States has power to enforce the lien on domestic vessels, under the Pennsylvania statute of June 13, 1836, which, though providing almost entirely for a process of enforcement through the state courts, does not exclude, but in one section contemplates, the action of the federal court. *Weaver v. The S. G. Owens*, 1 Wall. Jr. 359.

15. (July, 1855.) Motion to dismiss this libel for want of jurisdiction, on the ground that the statute of the state did not create a lien, but provides a remedy. Libel dismissed. *Wick v. Schooner Samuel Strong*, 6 McLean, 587.

16. (Sept., 1851.) The statute of the state of Wisconsin for the collection of demands against domestic boats and vessels, confers no lien. The District Court in admiralty has therefore no jurisdiction *in rem* against a domestic vessel at the suit of a domestic creditor. *The Celestine*, 1 Biss. 1.

17. (Sept., 1842.) When a local law gives a lien to materialmen and mechanics for their demands against a ship, it may be enforced in the admiralty. *The Hull of a New Ship*, 2 Ware, 203.

18. (Oct., 1858.) The restriction of sixty days in the Revised Statutes of Massachusetts, chap. 117, sec. 4, if it be incorporated into the statute of that state, 1855, chap. 231, is not applicable to proceedings in the District Court. *The Richard Busteed*, 1 Sprague, 441.

19. (Feb., 1863.) This court is not bound by the Massachusetts statute of limitations, but is inclined to follow its analogies. *Hall v. Hudson*, 2 Sprague, 65.

20. Where more than six years have elapsed since a cause of action has accrued, the commencement within the time of a suit in equity, which was subsequently discontinued, in the state

court, will not excuse the delay, especially where the other owners may have been prejudiced by the delay. *Ib.*

21. (Jan., 1846.) The provisions of state statutes or the decisions of the courts in explanation or enforcement thereof, will not supply a rule of decision in this court, unless such regulations are adopted by rules of the United States courts. *The Steamboat Delaware*, Olc. Adm. 240.

22. (Jan., 1872.) All state legislation providing for the enforcement of maritime contracts in any other manner than by a common-law remedy infringes on the exclusive jurisdiction of the federal courts, and is unconstitutional. *The Surplus and Remnants of the Ship Edith*, 5 Ben. 432.

23. (Nov., 1828.) Workmen and material-men having a lien on a vessel under the provisions of a state law may enforce it by a suit *in rem* in the admiralty. *Phillips et al. v. The Ship Thomas Scattergood*, Gilp. 1.

24. (May, 1841.) The court takes jurisdiction of claims for work and materials furnished to a domestic ship, because the law of the state of Pennsylvania gives a lien on the ship for such supplies. *Boon v. The Hornet*, Crabbe, 426.

25. Where a canal boat, built and used for service in the interior canals of Pennsylvania, and not on tide-water, was hauled on shore and repaired at a part of the river Schuylkill where the tide ebbed and flowed, this court had no jurisdiction of a claim for such repairs. *Ib.*

26. By the general maritime law no lien is given on a domestic vessel for work or materials furnished to her. *Ib.*

27. There can be no suit *in rem* unless there is a lien on the thing sought to be charged. *Ib.*

28. Where the law of a state gives a general lien on ships for all debts incurred on their account, this court will take cognizance, under such statute, of all contracts or charges of an admiralty or maritime nature, notwithstanding no lien was given therefor by the general maritime law, but not of contracts or charges not of an admiralty or maritime nature, although a lien may be given therefor by such state statute. *Ib.*

Stevedore.

1. (Nov., 1848.) A court of admiralty has no jurisdiction to afford a remedy either *in rem* or *in personam*, for the breach of an executory contract for personal services to be rendered to a vessel in port, in lading or unlading her cargo. *Cox v. Murray*, Abb. Adm. 340.

2. In order to clothe a contract with the privilege of a remedy in the admiralty courts, the subject-matter of the contract must be maritime in its nature. This is the case only when the matter done or begun to be done under the contract regards the fitment of the vessel herself for the voyage, aid and assistance rendered on board her in prosecuting the voyage, or the employment of her as the vehicle of a voyage. *Ib.*

3. (June, 1867.) Where a libel was filed to recover for stevedore's services, and exceptions were filed to it on the ground that the services were not maritime, and therefore the claim was not within the jurisdiction, — *Held*, that though the court would be disposed, if the question were a new one, to hold that such services were maritime, yet as the question had been repeatedly determined otherwise in the Southern District, the law of those decisions would be followed until modified by concurrent action on the part of both courts, or by the Circuit Court on appeal. *The Circassian*, 1 Ben. 209.

Territorial Courts.

1. (Jan., 1828.) The Constitution declares that "the judicial power shall extend to all cases in law and equity arising under it; the laws of the United States and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction." The Constitution certainly contemplates these as three distinct classes of cases; and if they are distinct, the grant of jurisdiction over one of them does not confer jurisdiction over either of the other two. The discrimination made between them is conclusive against their identity. *American Ins. Co. v. Canter*, 1 Pet. 512.

2. A case in admiralty does not, in fact, arise under the Con-

stitution or laws of the United States. These cases are as old as navigation itself; and the law, admiralty and maritime, as it existed for ages, is applied by our courts to the cases as they arise. It is not, then, to the eighth section of the territorial act that we are to look for the grant of admiralty and maritime jurisdiction in the territorial courts of Florida. Consequently, if that jurisdiction is exclusive, it is not made so by the reference in the act of Congress to the District Court of Kentucky. *Id.*

3. The judges of the Superior Court of Florida hold their offices for four years. These courts, then, are not constitutional courts, in which the judicial powers conferred by the Constitution on the general government can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the government, or in virtue of that clause which enables Congress to make laws regulating the territories belonging to the United States. The jurisdiction with which they are invested is not a part of that judicial power which is defined in the third article of the Constitution, but is conferred by Congress in the exercise of its powers over the territories of the United States. *Id.*

4. Although admiralty jurisdiction can be exercised, in the states, in those courts only which are established in pursuance of the third article of the Constitution, the same limitation does not extend to the territories. In legislating for them, Congress exercises the combined powers of the general and state governments. *Id.*

5. (Oct., 1879.) The act of Congress approved March 2, 1853, entitled "An act to establish the territorial government of Washington" (10 Stat. 172), enacts that the District Courts of the territory shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the Circuit and District Courts of the United States, and also of all cases arising under the laws of the territory. *Held*, that the District Courts of the territory have jurisdiction in admiralty cases. *The City of Panama*, 11 Otto, 453.

Tonnage Duties.

1. (June, 1876.) *It seems*, if services or a contract properly concern a vessel and her owners, they are maritime services, and

can be sued against the owners of a domestic vessel in a court of admiralty, or *in rem* against a foreign vessel. *The George T. Kemp*, 2 Lowell, 478.

2. The United States may have an action against a vessel for tonnage duties; *it seems* they may have an action against the owner, and perhaps against the master. *Ib.*

Towage.

1. (March, 1859.) Admiralty has jurisdiction of a suit to recover for services of a tug in hauling off a vessel aground, though the same do not amount to a salvage service. *The Clarion*, 1 Brown, 74.

2. (June, 1859.) Towage services are maritime in their character. *The Acadia*, 1 Brown, 73.

3. (June, 1874.) A claim for towage accrued against a vessel in May and June, 1865, while she was in the hands of a person who had contracted to purchase her. Having failed to fulfill his contract, she was returned to the owner, who took her to Canada within a month or two after the services were rendered, where she remained until June 27 of the following year. She was there resold to a *bona fide* purchaser without notice, who brought her within the jurisdiction of the court and kept her during the remainder of the summer. On October 6 the libel was filed and the vessel attached. *Held*, that the lien was waived and the action could not be maintained. *The Detroit*, 1 Brown, 141.

Warehousemen.

1. (April, 1865.) A court of the United States has, in general, no jurisdiction of suits against warehousemen by citizens of the same state. *The Mary Washington*, Chase, 125.

2. The admiralty jurisdiction conferred by the Constitution upon the national courts embraces all contracts of a maritime character to be performed upon navigable waters. And though the contract is to be performed wholly within ports of the same state, this does not exclude the jurisdiction of these courts. *Ib.*

3. (April, 1865.) The courts of the United States have not jurisdiction of actions against warehousemen, as such, prosecuted

between citizens of the same state. *The Mary Washington*, 1 Abb. U. S. 1.

4. A carrier transported goods to the port of delivery, and then, without notifying the consignee that they had come, stored them in his warehouse, where they were injured before the consignee knew of their arrival. *Held*:

(1.) That the carrier was liable as such, and not as warehouseman only, in the absence of affirmative proof of some facts excusing him from the duty of giving notice.

(2.) That, as the contract was for transportation over navigable waters, the consignor might proceed for damages in the District Court in admiralty, notwithstanding the port of shipment and the port of delivery were both in the same state. *Ib.*

Whaling Vessel.

1. (Nov., 1861.) The libellant was master and a co-owner of a whaling vessel. After the voyage had been made up and the amount due for his lay ascertained, and the proceeds of the voyage were in the hands of the other owners, — *Held*, that the libellant was entitled to recover, in admiralty, the amount due him as master, notwithstanding his co-ownership. *Dexter v. Munroe et al.*, 2 Sprague, 39.

2. A court of admiralty is not restrained from doing substantial justice by mere forms or technicalities. *Ib.*

3. The power which a court of admiralty possesses over its own process will enable it to do complete justice to all parties. *Ib.*

4. (June, 1863.) Where the master of a whaling vessel is also a co-owner, a libel in admiralty against the other owners to recover his lay, disbursements, and commissions on sales of slops, will be sustained as within the jurisdiction of the court so far as the lay is concerned, but not in respect to the other claims. *Hazard v. Howland*, 2 Sprague, 68.

Wharfage.

1. (Oct., 1877.) Claims for wharfage, arising out of either an express or an implied contract, are cognizable in admiralty. *Ex parte Easton*, 5 Otto, 68.

2. (March, 1871.) There is a maritime lien upon a domestic vessel for wharfage, which is enforceable in the admiralty. *The Canal Boat Kate Tremaine*, 5 Ben. 60.

3. The jurisdiction of the admiralty depends upon the subject-matter alone. *Ib.*

4. A contract for the wharfage of a canal boat is a maritime contract. *Ib.*

5. The maritime law implies a lien on the ship from every lawful contract of the master, made for the benefit of the ship. *Ib.*

6. (Sept., 1873.) The admiralty has jurisdiction of a claim by a wharfinger of double wharfage under the act of the state of New York passed May 6, 1870, in relation to wharfage. *The Canal Boat Ann Ryan*, 7 Ben. 20.

7. (April, 1878.) The agent to whom a vessel is consigned, and who does the business of the vessel, and to whom an account of the wharfage of the vessel during the time she was in his charge is presented before the departure of the vessel, is made liable for such wharfage by the statute of the state of New York (Laws of 1873, p. 430). Such liability, although created by statute, springs out of and is incident to a maritime transaction, is therefore maritime in its character, and accordingly may be enforced in admiralty. *The Atlantic Dock Co. v. Wenberg*, 9 Ben. 464.

8. (Aug., 1829.) A wharfinger has a lien on a vessel for wharfage. *Johnson v. The Schooner M'Donough*, Gilp. 101.

9. If a vessel is removed from a wharf secretly or wrongfully, and afterwards brought back without fraud or force, the lien of the wharfinger is revived. *Ib.*

10. Where the marshal levies on, but does not keep actual possession of a vessel which had been removed from a wharf without the knowledge of the wharfinger, and the vessel is subsequently returned to the same wharf, the wharfinger is to be paid his previous wharfage out of the proceeds of a sale under the execution made subsequent to her return. *Ib.*

11. (March, 1858.) Wharfage is the use of a wharf by a vessel for the loading or unloading of goods or passengers. Mere anchorage at a wharf is not wharfage. The use of a wharf is not "material" for a ship within the meaning of Rule 12, nor is a wharfinger a material-man. *The Gem*, 1 Brown, 37.

Pleadings in Admiralty. Generally.

1. (Dec., 1856.) There are no technical rules of variance or departure in pleading in the admiralty. *Dupont de Nemours & Co. v. Vance*, 19 How. 162.

2. (Dec., 1858.) The rules of pleading in admiralty must be strictly complied with, and the evidence and arguments confined to the points put in issue by the allegations of the libel and denial of the answer. *McKinlay v. Moorish*, 21 How. 343.

3. (May, 1835.) The proofs and allegations must coincide. Proofs to facts not put in contestation by the pleadings, and allegations of facts not established by proofs, will both be rejected. *Brig Sarah Ann*, 2 Sumn. 206.

4. (Oct., 1819.) A variance in pleading which would be fatal at common law may not be so in courts which proceed according to the civil law; as the rules which govern the former courts are seldom applicable to proceedings in the latter. *Crawford v. The William Penn*, 3 Wash. 484.

5. Rules of pleading in courts of common law, how far applicable in courts proceeding according to the civil law. *Ib.*

6. (Nov., 1845.) The court of admiralty never suffers the substantial justice of the case to be defeated by matters of form. *Taylor v. Harwood*, Taney's Dec. 437.

7. (July, 1856.) The libellants and respondents must recover and defend on their respective allegations and averments. *Campbell v. Steamer Uncle Sam*, McAll. 77.

8. (Jan. 1859.) The pleadings in a court of admiralty are more simple and less technical than in a court of common law. *West v. Steamer Uncle Sam*, McAll. 505.

9. There are no technical variances or departures in pleadings in admiralty. *Ib.*

10. (Nov., 1824.) The rules of pleading in the admiralty do not require all the technical precision which is required at common law, but they require that the cause of action should be clearly set forth, so that a plain and direct issue may be made up on the charge, and the evidence must be confined to the matter put in issue. *Jenks v. Lewis*, 1 Ware, 43.

11. (Nov., 1844.) The court will not, upon a summary appli-

cation of a claimant, inquire into damages caused by an unfounded arrest of his ship. *The Brig Oriole*, Olc. Adm. 67.

12. Nor will it assume power to coerce parties into issues not raised in the pleadings filed in the cause. *Id.*

13. (June, 1848.) A party cannot be allowed, after receiving a pleading and replying to it, to treat it, upon any ground of defect afterwards discovered, as a nullity, and proceed as if none had been served. *Gaines v. Travis*, Abb. Adm. 297.

14. (July, 1867.) The libel and answer should set out clearly and explicitly, though briefly, the facts relied on, and in collision cases this is especially important. *The Bark Havre & The Ship Scotland*, 1 Ben. 296.

15. (Feb., 1840.) Where it appears on the face of the libel that the court has not jurisdiction, or that the libellant has not capacity to sue, the respondent may demur; but if the incapacity does not appear, though true in point of fact, the respondent must take advantage of it by pleading in bar. *Knight v. The Brig Attila*, Crabbe, 326.

16. (1854.) Allegations in pleading are admissions by the pleader, and need no proof, unless denied and put in issue, and, as against the pleader, will be taken as matter conceded. *Ward v. The Brig Fashion*, Newb. Adm. 8.

Plea in Admiralty Suits.

1. (May, 1818.) A party who means to except to the jurisdiction of the court in a case of seizure must plead to that jurisdiction. If he files a claim and plea to the merits, on which the parties are at issue, it is a waiver of any exception to the jurisdiction. *The Sloop Abby*, 1 Mason, 360.

2. (May, 1840.) Where a permit to unlade and deliver goods was obtained by a fraudulent collusion between the claimant and the deputy collector of the port of New York, it was *held* that such a permit was utterly void; and that the goods landed under it were forfeited. The forfeiture may be enforced upon a general count under the fiftieth section of the Collection Act of 1799, ch. 128, charging that the goods were landed *without a permit*; for a void permit is no permit. *Bottomley v. United States*, 1 Story, 135.

3. Whenever a contract or obligation under seal is void *ab*

initio, the general plea of *non est factum* is proper. Where it is merely voidable, a special plea setting forth the special circumstances is necessary. *Ib.*

4. (June, 1867.) A plea to a libel, which sets up no matter in defense, is substantially a demurrer. *The Sea Gull*, Chase, 145.

5. When such a plea is overruled, it is in the discretion of the court to allow an answer to be filed, or to enter a decree at once for the damages claimed. *Ib.*

6. It not having been suggested on the hearing, that the facts set forth in the libel were untruly stated, and from other circumstances, the court refused to allow an answer to be filed, on its overruling the plea, and entered a decree for the damages. *Ib.*

7. (June, 1869.) If admiralty had no jurisdiction [of a libel to decree goods forfeited by reason of a fraud on the revenue laws], this must be pleaded, and the objection could not be made otherwise. *Merchandise v. United States*, Chase, 502.

8. (July, 1858.) In the admiralty, when the respondent intends to rely on the objection of the staleness of the claim, or any other defense that does not go to the merits, it should be propounded by formal plea, or by a distinct allegation in the answer. Otherwise, evidence will not ordinarily be received to support it. *The Platina*, 3 Ware, 180.

9. (March, 1854.) A plea of no forfeiture puts the allegation of seizure in issue, and if it be not proved, the libel is not sustained. *Schooner Silver Spring*, 1 Sprague, 551.

10. (Aug., 1836.) The non-joinder of proper respondents in an action *in personam* can be taken advantage of only by plea in abatement. *Reed v. Hussey*, 1 Blatchf. & H. Adm. 525.

11. The practice of courts of admiralty admits matter of abatement to be set up in the answer, but the answer must, in such case, demand the same judgment and be subject to the same rules as if a formal dilatory plea had been employed. *Ib.*

12. (May, 1847.) To entitle the claimant or respondent in admiralty to claim judgment against the libellant preliminarily, on the ground that his right of action did not mature until after the suit was commenced, the objection must be raised by plea in abatement or demurrer. *The Isaac Newton*, Abb. Adm. 11.

13. And where such plea has not been interposed, the court will not pronounce against the action merely on the ground that

it was prematurely brought, if the right of the action is perfected before the final hearing. *Ib.*

14. In such cases parties will be protected, in the adjustment of costs, from any injustice arising from a too early commencement of the suit. *Ib.*

15. (1794.) A plea to the jurisdiction of a court of admiralty can be interposed only by the defendant himself *in propria persona*, and on oath. No third person can be admitted to file such plea. *Teasdale v. Sloop Rambler*, Bee Adm. 9.

16. (Feb., 1874.) *Quære*, whether the defense of infancy can be made available otherwise than by a plea to the competency of libellant to sue in his own name. *The Melissa*, 1 Brown, 476.

Plea in Admiralty. Former Suit.

1. (May, 1837.) An objection, grounded on the pendency of another suit, for the same cause of action, is preliminary in its character, and should be taken in admiralty by a special plea, in the nature of a plea in abatement, known in the practice of the admiralty as a dilatory or declinatory exception. *Certain Logs of Mahogany*, 2 Sumn. 589.

2. The objection of *lis pendens* can be sustained only where the two suits are of the same character, and where the plaintiff in both suits is the same. *Ib.*

3. (April, 1858.) If the same question, between the same parties, upon the same subject-matter, be pending in a state court of competent jurisdiction to decide upon all the rights in controversy, the admiralty court will refuse to entertain a suit upon any portion of the matters so in litigation in the state court. *Turner v. Beacham*, Taney's Dec. 584.

4. (Oct., 1856.) The pendency of a proceeding in replevin in a state court, by which a party claiming to be a part owner of a steamboat has obtained the possession of the boat, does not affect the jurisdiction of a court of admiralty in a proceeding by libel, in which all the parties in interest are before it. *Thurston v. Steamboat Magnolia*, 1 Bond, 93.

5. A plea of a prior suit pending is not sustainable without the averment and proof that the cases are between the same parties and for the same cause of action. *Ib.*

6. (March, 1858.) Where property is in possession of a state

court it is exempted from the process of the United States courts. *Lewis v. The Ship Orpheus*, 3 Ware, 143.

7. The nature and kind of possession which an officer is bound to keep of personal property attached to save the attachment. *Ib.*

8. (Feb., 1858.) A sale by a sheriff on execution for debt, under the laws of Massachusetts, has none of the characteristics of an admiralty sale, and does not divest the paramount liens. A court of admiralty will enforce such liens by ordering the arrest and sale of the vessel, and from the proceeds satisfy the liens, and then pay over the residue to the purchaser under the sheriff's sale. *The Gazelle*, 1 Sprague, 378.

Plea in Admiralty. Statute of Limitations.

1. (Oct., 1822.) The statute of limitations of a state is no bar to a suit on the admiralty side of the courts of the United States. *Willard v. Dorr*, 3 Mason, 91.

2. The statute of Anne, limiting suits in the admiralty for seamen's wages to six years, is not a bar to such suit in the courts of the United States. *Ib.*

Surrender of Promissory Note.

1. (Jan., 1827.) Such suit [by material-men] cannot be maintained where the owner has given a negotiable promissory note for the debt, which is not tendered to be given up, or actually surrendered, at the hearing. *Ramsay v. Allegre*, 12 Wheat. 611.

2. (April, 1851.) The case of *Ramsay v. Allegre*, 12 Wheat. 611, commented on and explained. *Reppert v. Robinson*, Taney's Dec. 492.

3. The question whether a note or other security taken for a maritime contract is a bar to the admiralty jurisdiction or not, depends upon the effect which the note or other security has (by the laws of the place where it is made) upon the original contract. If it discharges and extinguishes it and stands in its place, it puts an end to the admiralty jurisdiction; and the surrender of the note cannot renew the original debt nor restore the admiralty jurisdiction over it. *Ib.*

4. The case of *Glenn v. Smith*, 2 Gill & Johns. 508, is deci-

sive upon the point that, in Maryland, taking a due-bill does not discharge the original contract nor extinguish the remedy upon it; and therefore a due-bill or promissory note taken in that state is no bar to a recovery on the original cause of action, under a libel filed in admiralty, provided the due-bill or promissory note be produced and filed at the trial, and offered to be surrendered to the respondent. *Ib.*

5. *Held*, also, that if it appeared on the proceedings that when the suit was brought, the due-bill was held by an assignee, and the suit was brought for his benefit, the admiralty jurisdiction could not be maintained. *Ib.*

6. The right to sue in admiralty upon claims of this description is personal, and is maintained upon principles and reasons which do not apply to an assignee. *Ib.*

7. An assignment after the suit was instituted, and after the court had taken jurisdiction of the case, would perhaps stand upon different grounds from an assignment made before. *Ib.*

8. (April, 1851.) A promissory note given for articles furnished towards the repair of a vessel will not bar a suit in admiralty on the original cause of action, where the libellant produces the note in court and surrenders it. *McKim v. Kelsey*, Taney's Dec. 502.

Demurrer. Admiralty.

1. (Oct., 1819.) A demurrer in a case proceeded on under the civil law does not prevent the party who demurred controverting the facts confessed in the demurrer and compelling the opposite party to prove them. *Crawford v. The William Penn*, 3 Wash. 484.

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RULES OF PRACTICE

FOR

THE COURTS OF THE UNITED STATES

IN

ADMIRALTY AND MARITIME JURISDICTION, ON THE INSTANCE
SIDE OF THE COURT, IN PURSUANCE OF THE ACT OF THE
23^D OF AUGUST, 1842, CHAPTER 188.

Rule 1. — Mesne Process. Service.

No mesne process shall issue from the district courts in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall be filed in the clerk's office from which such process is to issue. All process shall be served by the marshal or by his deputy, or, where he or they are interested, by some discreet and disinterested person appointed by the court.

1. (Oct., 1873.) What amounts to a sufficient service of process under the said act [Confiscation Act of July 17, 1862]. *The Confiscation Cases*, 20 Wall. 93.

2. The fact that the warrant, citation, and monition in the District Court was not signed by the clerk of the court is unimportant, it having been attested by the judge, sealed with the seal of the court, and signed by the deputy clerk. *Ib.*

3. (June, 1859.) In the absence of the judge, the clerk may issue process according to rules prescribed or instructions given by the judge. *Ship William Jarvis*, 1 Sprague, 485.

4. (June, 1879.) The process was properly served, being served by one T., who had been, by memorandum indorsed on the process by the marshal, deputized to execute the process. *The Tug E. W. Gorgas*, 10 Ben. 460.

Rule 2. — Process in Personam. Form.

In suits *in personam*, the mesne process may be by a simple warrant of arrest of the person of the defendant, in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein, that if he cannot be found, to attach his goods and chattels to the amount sued for; or, if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition, in the nature of a summons to appear and answer to the suit, as the libellant shall, in his libel or information, pray for or elect.

1. (Feb., 1825.) The courts of the United States, proceeding as courts of admiralty and maritime jurisdiction, may issue the process of attachment to compel appearance, both in cases of maritime torts and contracts. *Manro v. Almeida*, 10 Wheat. 473.

2. The process by attachment may issue, wherever the defendant has concealed himself or absconded from the country, and the goods to be attached are within the jurisdiction of the admiralty. *Ib.*

3. It may issue against his goods and chattels, and against his credits and effects in the hands of third persons. *Ib.*

4. The remedy by attachment in the admiralty, in maritime cases, applies even where the same goods are liable to the process of foreign attachment issuing from the courts of common law. *Ib.*

5. It applies to the case of a piratical capture, and the civil remedy is not merged in the criminal offense. *Ib.*

6. In case of default, the property attached may be condemned to answer the demand of the libellant. *Ib.*

7. It is not necessary that the property to be attached should be specified in the libel. *Ib.*

8. *It seems* that an attachment cannot issue without an express order of the judge; but it may be issued simultaneously with the monition; and where the attachment issued in this manner, and in pursuance of the prayer of the libel, this court will presume that it was regularly issued. *Ib.*

9. (Dec., 1870.) Stocks and credits are attachable in admi-

rality and revenue cases, by means of the simple service of a notice, without the aid of any statute. *Miller v. United States*, 11 Wall. 268.

10. (Oct., 1873.) A District Court of the United States, when acting as a court of admiralty, can obtain jurisdiction to proceed *in personam* against an inhabitant of the United States not residing within the district (within which terms a corporation incorporated by a state not within the district is meant to be included), by attachment of the goods or property of such inhabitant found within the district. *Atkins v. Disintegrating Co.*, 18 Wall. 272.

11. (June, 1841.) By the common law, foreign corporations and non-resident foreigners cannot be served with process by any of the courts of common law, nor can their property be attached to compel their appearance. The authority, whenever it exists, results from special custom or statute provisions. *Clarke v. N. J. Steam Navigation Co.*, 1 Story, 531.

12. *It seems* that the principles of the common law are inapplicable to process and proceedings in courts of admiralty. *Ib.*

13. The District Courts of the United States, as courts of admiralty, may award attachments against the property of foreign corporations found within their local jurisdiction. *Ib.*

14. (Dec., 1870.) A District Court of the United States, as a court of admiralty, cannot obtain jurisdiction to proceed *in personam* against an inhabitant of the United States, not residing within the district, by attachment of the goods or property of such inhabitant, found therein, to compel an appearance. *Atkins v. Fibre Disintegrating Co.*, 7 Blatchf. 555.

15. The cases of non-resident aliens, and of inhabitants resident within the district, but absconding therefrom, or concealed therein, distinguished. *Ib.*

16. The case of *Manro v. Almeida*, (10 Wheaton, 473,) commented on. *Ib.*

17. (June, 1878.) The jurisdiction of the District Court to enforce the personal liability of the respondents, as a foreign corporation, was properly exercised by issuing an attachment against its property. *Dyer v. N. S. Navigation Co.*, 14 Blatchf. 483.

18. (March, 1874.) The statute of March 2, 1867 (14 Stat. 453), makes arrests for debt, whether on mesne process or execution, depend upon the laws for similar arrests in the states

respectively, and applies to admiralty proceedings. *Louisiana Insurance Co. v. Nickerson*, 2 Lowell, 310.

19. This court will not order a defendant to give a stipulation to the action, under pain of imprisonment, in a case in which he is not liable to arrest. *Ib.*

20. By a rule of this court, passed in 1855, a warrant to attach the goods and chattels, or, in default thereof, the credits, of the defendant, may be granted in cases in which an arrest cannot legally be made. *Ib.*

21. It is within the power of the court to make such a rule. *Ib.*

22. (Dec., 1848.) Where a warrant of arrest, although containing a foreign attachment clause, gives no direction to bring the garnishee before the court, nor any citation to him to answer the libel, a default entered against him for non-appearance on the return of the process is irregular. *Smith v. Miln*, Abb. Adm. 373.

23. The primary purpose of the attachment is to effect the appearance of the defendant in the action, and not that of the garnishee. *Ib.*

24. The practice of courts of admiralty, in respect to the process of foreign attachment, defined. *Ib.*

25. In order to authorize proceedings, in a suit prosecuted in a court of admiralty by foreign attachment, to be carried on against the garnishee personally, it is necessary that the warrant or process served upon him should contain a summons or notice warning him of the claim in suit and citing him to appear and answer. *Ib.*

26. (Jan., 1849.) The act of Congress of Aug. 23, 1842 (4 Stat. 518, sec. 6), conferring upon the Supreme Court power to regulate the practice of the Circuit and District Courts, taken in connection with the rules promulgated by the Supreme Court under that act in 1845, operates as a suspension of the acts of Congress of 1839 and 1841, abolishing imprisonment for debt on process issuing out of the United States courts in all cases where by the local law it would be abolished. *Gaines v. Travis*, Abb. Adm. 422.

27. Since the adoption of the rules of 1845, parties are liable to arrest and imprisonment on process issuing out of the United States courts, irrespective of subsequent legislation in the several states abolishing imprisonment on like process. *Ib.*

28. (Sept., 1850.) In holding a respondent to bail, a court of admiralty will be governed much by the equitable considerations of the case. *Martin v. Walker*, Abb. Adm. 579.

29. Accordingly, where a libellant procured the arrest of respondent in a suit brought in a district different from that in which they both resided, upon a stale demand of small amount, and which was already in litigation between the parties in a court of the state in which they resided, — *Held*, that the respondent ought to be discharged from the arrest. *Ib.*

30. A motion to set aside an arrest, founded on irregularity in the libellant's proceedings, is not within Rule 25 of the Circuit Court, and will not be denied of course, merely because it was not made at the earliest day practicable after the arrest. *Ib.*

31. (March, 1867.) Where a libel was filed against a corporation foreign to the district, and, under process issued upon that libel, property of the corporation was attached, and a motion was made to set aside the attachment as contrary to the provision of the eleventh section of the Judiciary Act of 1789, — *Held*, that the words "civil suit" in that section do not embrace admiralty proceedings. *Atkins v. The Fibre Disintegrating Co.*, 1 Ben. 118.

32. That, if they did, the act of Aug. 23, 1842, and the Supreme Court rules of 1845 must be held to have repealed that section as far as relates to admiralty proceedings. *Ib.*

33. That the power to attach the property of absent defendants to compel an appearance has always been recognized as within "the course of the admiralty," and the intention to withdraw it or to limit its power will not be inferred from the use of an indefinite phrase. *Ib.*

34. That the objection to the proceedings based on the words of the eleventh section of the act of 1789 is not tenable. *Ib.*

35. (Nov., 1869.) Where a warrant of arrest was issued, with a clause directing the marshal, if the respondent could not be found, to attach his property, and the marshal returned that he had arrested the respondent and had attached his property, — *Held*, that the attachment must be set aside. *Grace v. Evans*, 3 Ben. 479.

36. (Feb., 1870.) Where process was issued containing a clause of foreign attachment, and containing on its face a notice of what the process demanded, and for what cause, and of the

time and place when the garnishees must appear and answer, and the marshal made this return on the process: "Personally served on F. & T.", — *Held*, that service of the process on the garnishees was service of the notice required to be served on them, and was a sufficient attachment of the credits and effects of the respondent in their hands. *Cushing v. Laird*, 4 Ben. 70.

37. An attachment of the property of a respondent who is not an inhabitant of the United States, and is not found in the district, is allowable under the second admiralty rule of the Supreme Court. *Ib.*

38. (1802.) Attachments may issue out of the admiralty courts of the United States against the goods or debts of an absent person, so as to make him a party to the suit. *Bouysson v. Miller*, Bee, Adm. 186.

39. (March, 1871.) The proceedings by summons to the master, provided for in sec. 6 of the Merchant Seamen's Act of 1790, are cumulative and optional, and the party may resort to an attachment in the first instance. *The M. W. Wright*, 1 Brown, 290.

Rule 3. — Bail. Execution.

In all suits *in personam*, where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable, or in any appellate court. And upon such bond or stipulation, summary process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce the final decree so rendered, or, upon appeal, by the appellate court.

1. (Aug., 1847.) Under Rule 3 of the Supreme Court, the principal and his surety on the bond or stipulation given upon an arrest *in personam* stand upon the same footing. *Holmes v. Dodge*, Abb. Adm. 60.

2. The award which grants execution upon a final decree authorizes it against all parties embraced in the decree, and there is no necessity of special notice to the surety of respondent of an application for an execution against him. *Ib.*

3. (Jan., 1848.) The practice of the English admiralty, and the former practice of the District Court, in respect to the security required to be given by a respondent arrested upon bailable warrant, in order to authorize his discharge from the arrest, stated. *Gardner v. Isaacson*, Abb. Adm. 141.

4. The standing rules of the District Court, relating to bail stipulations to be given on the execution of a warrant *in personam*, and to the method of enforcing them, are superseded by the Supreme Court Rules of 1845 upon the same subject; and stipulations must now be exacted conformably to the Supreme Court Rules. *Ib.*

5. A respondent arrested in an admiralty suit is not entitled, upon the return-day of the warrant, to be discharged from arrest on giving a stipulation for *costs*, pursuant to the rule of the District Court; but he must remain in custody until he gives bond or stipulation to satisfy the *decree* made against him. *Ib.*

6. The non-imprisonment act of the state of New York (1 Rev. Stats. 807, sec. 1) is made to be, within this state, the law of the United States also, by force of the acts of Congress of 1839 and 1841 (5 Stat. 321, 410); but it does not embrace arrests upon process issuing out of a marine court. It is limited to civil process issuing out of courts of law, and executions issuing out of courts of equity. *Ib.*

7. (June, 1848.) After a bond has been given by a respondent to the marshal, in compliance with the rules of the Supreme Court, the libellant cannot exact any additional stipulation. *Gaines v. Travis*, Abb. Adm. 297.

• 8. If the former rules of the District Court respecting security to be given for costs may be considered as still in force for the purpose of protection to the officers of the court for the recovery of their fees, this is not a matter which affects the libellant, and he is not entitled to ground any proceeding on the omission of the respondent to give the security prescribed by those rules. *Ib.*

9. (Jan., 1849.) Under the rules promulgated by the Supreme Court, execution properly issues against stipulators summarily upon the decree rendered against their principals; the giving the stipulation being regarded as a submission by the stipulator to such decree as may be rendered against the party for whom he is bound. *Gaines v. Travis*, Abb. Adm. 422.

10. (Oct., 1849.) The practice of courts of admiralty does

not admit of a surrender of the principal in exoneration of bail. *Cure v. Bullus*, Abb. Adm. 555.

11. In order to be discharged from a bail-bond or stipulation given in admiralty, the party must establish fraud, deceit, duress, illegality of consideration, or other matter such as at law or in equity would avoid a common money-bond or would entitle a party to be relieved from it. *Ib.*

12. (Nov., 1869.) The proper form of stipulation to be given for the discharge of a party arrested in a suit in admiralty, is for the appearance of the party to abide by the decree of the court in the cause, and not for the payment of the sum decreed. *Grace v. Evans*, 3 Ben. 479.

Rule 4.—Dissolving Attachment of Goods, &c. Bond or Stipulation. Execution.

In all suits *in personam* where goods and chattels or credits and effects are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable, upon the defendant whose property is so attached giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court; and, upon such bond or stipulation, summary process of execution shall and may be issued against the principal and sureties by the court to which such warrant is returnable, to enforce the final decree so rendered, or, upon appeal, by the appellate court.

1. (Dec., 1876.) A suit in admiralty in a national court, to enforce a lien given by the state law, is not a judicial proceeding under such law; and therefore the United States is not entitled in such suit to have the *res* discharged from arrest, under sec. 3753 of the Revised Statutes. *The Revenue Cutter*, 4 Sawyer, 136.

2. (June, 1828.) When property is taken for security in the admiralty by warrant of attachment, the attachment may be dissolved and the property restored to the claimant on his filing a stipulation, with sureties, according to the form used by the court. *Poland et al. v. The Freight and Cargo of the Brig Spartan*, 1 Ware, 134.

3 (April, 1869.) Where goods were seized as smuggled, and a libel was filed without delay to forfeit them, and a claim was put in by an agent of the owner of the goods, who applied for an appraisement of the property, and its delivery to him on bond,—*Held*, that sec. 89 of the Act of 1799 (1 Stat. 695), applies only to seizures for violations of that act; that a delivery on bail in this case was a matter of discretion, and that, as there had been no delay in the prosecution and the goods were not perishable, the application to bond must be refused. *Fifteen Pieces of Black Silk*, 3 Ben. 189.

4. (Oct., 1871.) Where cargo is arrested in admiralty, in respect of the freight due for its transportation, the ordinary course is for the owner of the cargo to pay into the registry of the court any freight acknowledged to be due, and thus obtain a release of his property from the custody of the marshal, and a discharge of his liability for the freight. *The Freight-Money of the Canal-Boat Monadnock*, 5 Ben. 357.

5. Freighters cannot be compelled to give bail for the value of cargo so arrested, and have no right, under ordinary circumstances, to give bail for freight which they acknowledge to be due. *Ib.*

6. (April, 1878.) A vessel, cargo, and freight being attached on a libel on a bottomry bond, the owner of the cargo moved for leave to bond in its value, less the freight, on paying the freight into court, and, the libellant opposing, moved for a sale of the cargo. *Held*, that, as it appeared likely that the proceeds of the sale of the vessel alone would be sufficient to meet the demand of the libellant, if proved, the sale of the cargo would not be ordered; but the cargo must be bonded in its full value, and not less freight. *The Bark Archer*, 9 Ben. 455.

7. It is no reason for refusing to a libellant any part of the customary security, that he seems to have much more than enough security. *Ib.*

8. (May, 1853.) It is the surety's own fault if he fails to exact of his principal a separate stipulation to indemnify him against loss; and although the rules in admiralty are silent with regard to this form of stipulation, yet as a familiar and well established part of the civil law and general admiralty practice, the court would not hesitate, upon the application of the surety, to

direct it to be given. *Carroll v. The Steamboat T. P. Leathers*, Newb. Adm. 432.

Rule 5.—Bonds or Stipulations — How Taken.

Bonds or stipulations in admiralty suits may be given and taken in open court, or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or any commissioner of the United States authorized by law to take bail and affidavits in civil cases.

Rule 6.—Bail Bond. Reducing Amount. New Sureties,

In all suits *in personam*, where bail is taken, the court may upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court to be given, upon motion, and due proof thereof.

Rule 7.—Warrant of Arrest. Order of Court.

In suits *in personam*, no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the court, upon affidavit or other proper proof, showing the propriety thereof.

Rule 8.—Suits in Rem. Decree for Delivery of Ship, &c.

In all suits *in rem* against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances are in the possession or custody of any third person, the court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the marshal or other proper officer, if, upon the hearing, the same is required by law and justice.

Rule 9.—Process in Rem. Arrest of Ship, Goods, &c. Notice.

In all cases of seizure, and in other suits and proceedings *in rem*, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession for safe custody, and shall cause public notice thereof, and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the district court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

1. (Feb., 1807.) In all proceedings *in rem*, the court has a right to order the *thing* to be taken into custody of the law; and it is to be presumed to be in custody of the law unless the contrary appears. *Jennings v. Carson*, 4 Cranch, 2.

2. (Feb., 1808.) A seizure beyond the limits of the territorial jurisdiction for breach of a municipal regulation is not warranted by the law of nations, and such seizure cannot give jurisdiction to the courts of the offended country, especially if the property seized be never carried within its territorial jurisdiction. *Rose v. Himely*, 4 Cranch, 241.

3. (Feb., 1808.) The question whether a seizure for violation of the law of the United States be of admiralty or common-law jurisdiction is to be decided by the place of *seizure*, not by the place of the *offense*. *United States v. Schooner Betsey*, 4 Cranch, 452, 530.

4. (Feb., 1810.) A seizure beyond the limits of the territorial jurisdiction, for breach of municipal regulation, is warranted by the law of nations. *Hudson v. Guestier*, 6 Cranch, 281.

5. (Dec., 1866.) The distinguishing and characteristic feature of a suit in admiralty is that the vessel or thing proceeded against itself is seized and impleaded as the defendant, and is judged and sentenced accordingly. By the common-law process, property is reached only through a personal defendant, and then only to the extent of his title. *The Moses Taylor*, 4 Wall. 411.

6. (Dec., 1870.) Seizure of such stocks [railroad stocks, un-

der the confiscation acts of Aug. 6, 1861, and July 17, 1862] may be made by giving notice of seizure to the president or vice-president of the railroad company; and a seizure thus made by the marshal, in obedience to a warrant and monition, is sufficient to give the District Court jurisdiction. *Miller v. United States* 11. Wall. 268.

7. (Dec., 1870.) When, under the act of July 17, 1862, property intended for confiscation has been seized by the marshal and the seizure is brought before the court by the filing of a libel for the forfeiture of the property, and is recognized and adopted by it, the property is subject to the control of the court in the hands of its officer, and it has jurisdiction of the case so far as a seizure of the *res* is essential to give it. *Tyler v. Defrees*, 11 Wall. 331.

8. This is especially so of real estate lying within the territorial jurisdiction of the court, and which, being incapable of removal, will always be found to answer the orders and decrees of the court in the progress of the cause. *Ib.*

9. (April, 1877.) Proceedings *in rem* in admiralty cannot be instituted by a party against an undivided interest of an owner in a vessel. *Insurance Co. v. Schooner C. L. Breed*, 1 Flipp. 655.

10. (Nov., 1874.) In cases of information, an actual seizure of the *res* prior to the filing of the libel is essential to the jurisdiction of the federal courts. *Tug May and Tug Oconto*, 6 Biss. 243.

11. (Feb., 1858.) A vessel being in the possession of a sheriff by virtue of a writ of attachment on mesne process from a state court, and the marshal holding a warrant to arrest the same vessel in a suit by seamen for wages, the sheriff refused to permit the marshal to take possession of the vessel, and the latter returned his precept unexecuted. The court refused to proceed to exercise jurisdiction over the vessel. *The Gazelle*, 1 Sprague, 378.

12. (March, 1858.) Where a sheriff holds a vessel by attachment, on mesne process, to secure a debt, it is proper that he should yield possession to a marshal having a warrant to arrest the vessel to enforce a seaman's lien for wages. *The Julia Ann*, 1 Sprague, 382.

13. But if the marshal do not in fact serve his warrant by

taking possession of the vessel, although he make return that he was prevented from doing so by an adverse possession of the sheriff, this court does not take jurisdiction of the vessel. *Ib.*

14. The practice has been to wait until the sheriff's custody has ceased, and then for the marshal to arrest the vessel. *Ib.*

15. (Feb., 1871.) A libel of information was filed against goods, to forfeit them for alleged violation of the revenue laws, and process was issued to the marshal, commanding him to attach the property and detain it in his custody. The marshal returned that he had been unable to attach the property and to detain it in his custody, and an *alias* monition was issued to him. On the record in the cause, and an affidavit showing that the goods had been, previous to the filing of the libel, seized by the collector of the port of New York and remained in his custody, and that a certificate to that effect had been issued to the marshal, an application was made on behalf of the United States, for an order that the *alias* monition be modified so as to conform to the provisions of the thirty-first section of the act of July 18, 1866 (14 Stat. 186).

Held, that the provisions of the fourth section of the act of May 8, 1792 (1 Stat. 277), requiring the marshal to take custody of all goods seized by an officer of the revenue, were abrogated by the thirty-first section of the act of July 18, 1866 (14 Stat. 186).

That the ninth Admiralty Rule of the Supreme Court, in view of the provision of the act of 1866, was not applicable to the case, it being a case in the language of that Rule, "otherwise provided for by statute."

That the *alias* monition would, therefore be modified, so that it should command the marshal to attach the property by leaving with the collector or other person having the property in custody, a copy of the monition and a notice requiring such collector or other person to detain such property in custody until the further order of the court respecting it. *United States v. One Case of Silk, &c.*, 4 Ben. 526.

Rule 10. — Perishable Goods. Sale. Delivery to Claimant.

In all cases where any goods or other things are arrested, if the same are perishable or are liable to deterioration, decay, or injury, by

being detained in custody pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much thereof to be sold as shall be perishable or liable to depreciation, decay, or injury; and the proceeds, or so much thereof as shall be a full security to satisfy in decree, to be brought into court to abide the event of the suit; or the court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisement, to be had under its direction, either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties, in such sum as the court shall direct, to abide by and pay the money awarded by the final decree rendered by the court, or the appellate court, if any appeal intervenes, as the one or the other course shall be ordered by the court.

1. (Nov., 1865.) The court has power, independent of any statute, to discharge, upon bail, property in custody, in cases of seizure under the Import Acts, whether upon land or water. *United States v. Three Hundred Barrels of Whiskey*, 1 Ben. 15.

2. The same power exists in the present case under the 48th and 50th sections of the Revenue Act of June 30, 1864. *Ib.*

3. (June, 1867.) Where goods which had been entered for warehouse were libeled by the United States as forfeited, and were attached by the marshal under the process while still in warehouse, and the owners filed a claim to them, and presented a petition to the court praying that the goods be appraised at their cash value, less the duties, that they might be bonded in accordance with the eighty-ninth section of the act of March 2, 1799 (1 Stat. 696),—*Held*, that the practice of giving the bond in such cases, in the amount of the value of the property, less the duties, is correct, and will continue to be the practice of this court till overruled by superior authority. *Four Cases Silk Ribbons*, 1 Ben. 214.

4. The case of the *United States v. Segars (Mayoz et al., Claimants)* (16 Legal Intelligencer, 388), commented on. *Ib.*

Rule 11. — Delivery of Ship to Claimant. Sale. Proceeds.

In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him, upon a due appraisement, to be had under the direction of the court, upon the claimant's depositing in court so much money as the court shall order,

or upon his giving a stipulation, with sureties, as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court, or otherwise disposed of, as it may deem most for the benefit of all concerned.

1. (Feb., 1825.) Upon a mandate to the Circuit Court, to carry into effect a general decree of restitution by this court, where the property has been delivered upon a stipulation for the appraised value, and the duties paid upon it by the party to whom it is delivered, the amount of the duties is to be deducted from the appraised value. *The Santa Maria*, 10 Wheat. 431.

2. (Jan., 1827.) Whenever a stipulation is taken in an admiralty suit, for the property subjected to legal process and condemnation, the stipulation is deemed a mere substitute for the thing itself, and the stipulators liable to the exercise of all those authorities on the part of the court, which it could properly exercise, if the thing itself were still in its custody. This is the known course of the admiralty. *The Palmyra*, 12 Wheat. 10.

3. (Dec., 1864.) Stipulators in admiralty who have entered into stipulations to procure the discharge of a vessel attached under a libel for collision cannot be made liable for more than the amount assumed in their stipulation as the amount which the offending vessel is worth, with costs as stipulated for. *The Ann Caroline*, 2 Wall. 538.

4. (Oct., 1878.) A bond accepted by the court upon ordering the delivery to the claimant of property seized in admiralty is, in the subsequent proceedings, a substitute for the property; and the question whether a case is made for the recall of the property must be determined before a final decree on the bond is rendered in the District Court, or in the Circuit Court on appeal. *United States v. Ames*, 9 Otto, 35.

5. (Oct., 1813.) Even if such bond [given upon the delivery of property on bail] were void, the court would, by attachment, enforce a redelivery of the property by the claimant. *Brig Struggle*, 1 Gall. 475.

6. (Sept. 1857.) Where in a suit *in rem* against a vessel, after she had been discharged on a stipulation for costs and value, the latter in \$4,000, the amount claimed in the libel, the libel was

amended by claiming \$8,000, and subsequently a decree was entered in favor of the libellant for \$7,834.75, with interest, with a provision that the stipulators pay into the registry the amount of the stipulation, and afterwards the District Court made an order that the claimant redeliver the vessel to the marshal, but that, it being represented that she was beyond his control, he pay into the registry \$10,000, part of the purchase-money of the vessel on her sale by him subsequently to her discharge, and that that be taken as a sufficient compliance with the order to redeliver, — *Held*, on appeal, that the order for the redelivery of the vessel or the payment of the \$10,000 into the registry was erroneous. *The Union*, 4 Blatchf. 90.

7. The vessel, after being so discharged, returned into the hands of her owner subject to all previously existing liens or charges, the same as before her seizure, except that on account of which she was seized; and she was also subject to any subsequently accruing liens or charges in the hands of her owner, or in the hands of any person to whom she might be transferred. *Ib.*

8. A redelivery of the vessel would be one subject to all these existing or subsequently accruing liens, and also to the rights of any *bona fide* purchaser, in case of a sale of her in the meantime. *Ib.*

9. In case of any mistake or fraud committed in entering into the stipulation, and of the improvident discharge of the vessel, it would be competent for the court to relieve the parties concerned, on an application within a reasonable time, by ordering the vessel back into the custody of the officer. *Ib.*

10. (Oct., 1872.) A vessel which has once been arrested in the admiralty and discharged on stipulation for her value cannot be arrested again in the admiralty for the same cause of action. *The Thales*, 10 Blatchf. 203.

11. (July, 1848.) The requisites of a valid stipulation in admiralty, considered. *The Infanta*, Abb. Adm. 327.

12. A defective execution of a stipulation will be deemed waived unless excepted to before the close of the term next after the opposite party has notice of the defect. *Ib.*

13. The rule is strictly observed in the case of stipulations given in behalf of seamen. *Ib.*

14. (Jan., 1866.) Where a vessel and cargo were libeled for salvage, and bonded in their full value, and thereafter the owners

of the cargo filed a libel against the vessel, claiming to recover the damages occasioned to the cargo by the disaster out of which the salvage claim arose, to an amount equaling the value of the vessel, and thereupon, before this process was returned, the stipulators for value in the salvage case applied to have their stipulations canceled, and the vessel remanded to custody, under the process in the salvage case, — *Held*, that the application was premature, and could not be entertained before the process was returned, and notice published as required by the rules, because till then all parties were not before the court. *The Ship Empire and Cargo*, 1 Ben. 19.

15. Whether relief could be given in such a case, *quære*. *Ib*.

16. (March, 1866.) Where a possessory action was brought by the owner of seven eighths of a vessel, and the master, in possession and owning one eighth, applied for leave to bond the vessel before filing his answer, and while the court was sitting to dispose of the admiralty calendar, — *Held*, that, without passing upon the merits, the court would deny the motion. A motion by the defendant to bond in a possessory action is not ordinarily entertained on affidavits before issue joined. *Treat v. The Schooner Rainbow*, 1 Ben. 40.

17. Where no delay is likely to attend the disposal of such a case upon the merits, the reason for a delivery upon bail fails. *Ib*.

18. (Oct., 1867.) Where several libels were filed against a vessel to recover claims, which amounted to more than the appraised value of the vessel, — *Held*, that she might be discharged on the claimants giving a stipulation in the full value of the vessel, the same to stand in court for the benefit of all the libellants before the court. *The Ship Antelope*, 1 Ben. 521.

19. That a married woman, though she justified in the required amount, would not be accepted as surety. *Ib*.

20. (Sept., 1869.) Where several libels had been filed against a vessel to recover amounts exceeding her value, and the owners applied to have her discharged, on their giving one stipulation in the amount of her value, — *Held*, that the amount of the freight was not to be included in the stipulation. *The Bark Vivid*, 3 Ben. 397.

21. (June, 1870.) After such decree was entered [that the libellants recover possession of the vessel on their paying certain moneys into court as security for any sum found due the master,

for which he might have a lien on the vessel] the respondent gave notice of appeal, but took no steps to perfect his appeal for several days, and the owners applied to the court for leave to bond the vessel. *Held*, that the court would not grant leave to bond the vessel, but would direct that the decree be executed, unless the respondent [the master] perfected his appeal and procured the cause to be transmitted to the appellate court within two days. *Muir v. Brig Brisk and Alfred Morine*, 4 Ben. 252.

22. (March, 1871.) A stipulation for value was given on the discharge of a vessel from custody, fixing her value at \$1,750, and containing an agreement that, "in case of default or contumacy on the part of the claimant or his surety, execution *for the above amount* may issue," &c. The stipulation bore a heading that it was "entered into pursuant to the rules and practice of the court." A decree being afterwards entered against the vessel for \$3,767.29, the libellant claimed to be entitled to recover interest at the rate of six per cent from the date of the stipulation. *Held*, that the terms of the stipulation made the rules of the court a part of the contract, and that, under the provisions of Rule 71,¹ interest on its amount from its date must be paid, in addition to the \$1,750. *The Steam Propeller Belle*, 5 Ben. 57.

23. This rule, and the fact that it is made a part of the stipulation, is not noticed, in the case of the *Ann Caroline* (2 Wall. 538), which would seem to hold the contrary view. *Ib.*

24. (Sept., 1878.) A libel was filed against a vessel on a bottomry bond. The default of all persons was entered except that of a claimant who was in possession at the time of the attachment of the vessel, claiming under mortgages overdue and unpaid. The vessel was sold and the proceeds paid into court. Both parties applied for leave to bond the proceeds. The libellants claimed that evidence already taken by the claimant, if unexplained or uncontradicted, established their right to the amount of their bottomry bond as against the vessel. *Held*, that though in a clear case, when the rights of the libellant were admitted, the court might permit him to take the money from the registry on giving proper security for its return, such was not this case, the libellants' right being denied by the plead-

¹ Of the District Court.

ings, and the court would not prejudge it on a partial production of the evidence. *The Bark Archer*, 10 Ben. 99.

25. Motion of the libellants denied, and motion of the claimant granted. *Ib.*

26. (Dec., 1878.) A stipulation for value can be substituted for property in custody, at any time, by order of court. *The Sloop Martha C. Burnite*, 10 Ben. 196.

27. At any time before default, property in custody may be bonded in pursuance of sec. 941 of the Revised Statutes of the United States, without any other condition than is prescribed in that section. *Ib.*

28. But whether it can be bonded as a matter of right after default, *quære*. *Ib.*

29. (June, 1879.) A boat of the Brooklyn Annex line, running from Jersey City to Fulton Street, Brooklyn, came in collision with a barge in tow of a tug coming down the East River just outside of the piers. As a consequence of the collision the ferry-boat sank. Suit was brought for damages, and the same person appeared as claimant for both tug and tow when they were both libeled, and gave a single stipulation for value to stand for both vessels, by consent. *Held*, that, under the practice adopted in giving a single stipulation for both, it was not necessary to decide which of them was in fault, if only one. *The Tug John Cooker and The Barge James W. Eaton*, 10 Ben. 488.

30. (Oct., 1879.) A libel was filed against a domestic vessel on Jan. 25, 1879, to recover for supplies furnished to her. Process was issued to the marshal, who returned that he had attached the vessel. At the libellant's request no keeper was put by the marshal on board the vessel, which was then undergoing repairs at City Island. No notice to appear was ever published. On Sept. 16, 1879, on motion of the libellant's proctor, an order was made that the marshal take the vessel into his custody under the original process and put a keeper on board. The marshal did so, and removed the vessel from City Island to a pier in the East River. H., the shipwright who had been repairing her, appeared as a claimant, averring that, when the vessel was seized by the marshal, he was in possession of the vessel, on which he claimed a common-law lien. He gave a bond under the act of 1847, and an order was made in the usual

form for the release of the vessel, and the marshal gave him a notice to the keeper on the vessel to discharge her, with which he went to the vessel. C., the master of the vessel, who was also one-sixth owner, was on board, and so was the proctor for the libellant. A controversy arose between them, which resulted in H.'s being arrested by a police officer and compelled to leave the vessel. He had shown the marshal's notice to the keeper, but refused to leave it with him or to show it to the other parties. After his arrest the keeper left the vessel in the possession of the master. H. then moved the court for an order directing the marshal to retake the vessel and restore her to him. The master opposed the motion, claiming that he, and not the alleged claimant, was in possession of the vessel when the marshal retook her under the order of September 16. The libellant also opposed the motion, denying that he had notice of the claimant's application to bond the vessel. Pending the motion the court made an order directing the marshal to take the vessel into custody and hold her until the determination of the motion.

Held, that it is the duty of the court, on the dissolution of an attachment against a vessel under its process, to cause the vessel to be restored to the party who was in possession at the time when she was taken under the process ;

That where there are two different parties, each claiming to have been so in possession, the marshal ought not, on the dissolution of the attachment, to deliver her to either without the order of the court ;

* That, in this case, the order for the release of the vessel had not been duly executed, and the court therefore had jurisdiction to order the marshal to take her into his custody again, under the original process ;

That the libellant's default as to the bonding of the vessel should be opened, and he have leave to file objections to the right of H. to appear as a claimant ;

That new publication of notice to all parties to appear be had, on the return of which, C., the master, would have the opportunity to appear and aver his possession at the time of seizure ; and the question between him and H. could be then properly settled. *The Schooner Two Marys*, 10 Ben. 558.

31. (April, 1870.) A vessel discharged from arrest upon giving bond or stipulation returns to her owner forever discharged

from the lien which was the foundation of the proceedings against her, and the court has no power to order her to be arrested again. *The Old Concord*, 1 Brown, 270.

32. *It seems*, where the sureties become insolvent, the court may require the claimant to furnish new sureties, on penalty of contempt, and of being denied the right to appear further and contest the suit. *Ib.*

Rule 12. — Material-Men.

In all suits by material-men for supplies or repairs, or other necessities, the libellant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*.

1. (Feb., 1819.) The admiralty possesses a general jurisdiction in cases of suits by material-men, *in personam* and *in rem*. *The General Smith*, 4 Wheat. 438.

2. (Feb., 1824.) Material-men have a lien which may be enforced by a proceeding in the admiralty, *in rem*, for necessities or supplies furnished in a port to which the vessel does not belong. *The St. Jago de Cuba*, 9 Wheat. 409.

3. (Jan., 1827.) *Quære*, whether a suit *in personam* in the admiralty may be maintained against the owner of a ship by material-men furnishing supplies for the ship in her home port, where the local law gives no specific lien upon the ship which can be enforced by a proceeding *in rem*. *Ramsay v. Allegre*, 12 Wheat. 611.

4. However this may be in general, such suit cannot be maintained where the owner has given a negotiable promissory note for the debt, which is not tendered to be given up or actually surrendered at the hearing. *Ib.*

5. (Jan., 1833.) A libel was filed in the District Court of the United States for the Eastern District of Louisiana, against the steamboat Planter, by H. and V., citizens of New Orleans, for the recovery of a sum of money alleged to be due to them, as shipwrights, for work done and materials found in the repairs of the Planter. The libel asserts that, by the admiralty law and the laws of the State of Louisiana, they have a lien and privilege upon the boat, her tackle, &c., for the payment of the sums due for the repairs and materials, and prays admiralty process against the boat, &c. The answer of the owners of the Planter avers

that they are citizens of Louisiana, residing in New Orleans; that the libellants are also citizens, and that the court has no jurisdiction of the cause. *Held*, that this was a case of admiralty jurisdiction. *Peyroux v. Howard*, 7 Pet. 324.

6. In the case of the *General Smith*, 4 Wheat. 438, s. c. 4 Peters's Condensed Reports, it is decided that the jurisdiction of the admiralty, in cases where the repairs are upon a domestic vessel, depend upon the local law of the state. Where the repairs have been made or necessities furnished to a foreign ship, or to a ship in the ports of a state to which she does not belong, the general maritime law gives a lien on ships as security; and the party may maintain a suit in the admiralty to enforce the right. But, as to repairs or necessities in the port or state to which the ships belong, the case is governed altogether by the local law of the state; and no lien is implied unless it is recognized by that law. But if the local law gives the lien, it may be enforced in the admiralty. *Ib.*

7. The services in this case were performed in the port of New Orleans, and whether this was within the jurisdiction of the admiralty or not, depends on the fact whether the tide in the Mississippi ebbs and flows as high up the river as the port of New Orleans. The court considered themselves authorized judicially to notice the situation of New Orleans, for the purpose of determining whether the tide ebbs and flows as high up the river as that place; and being satisfied that, although the current of the Mississippi at New Orleans may be so strong as not to be turned backwards by the tide; yet the effect of the tide upon the current is so great as occasions a regular rise and fall of the water, New Orleans may be properly said to be within the ebb and flow of the tide, and the jurisdiction of the admiralty prevails there. *Ib.*

8. In order to the decision whether the admiralty jurisdiction attaches to such services as those performed by the libellants, the material consideration is, whether the service was essentially a maritime service, and to be performed substantially on the sea or tide water. It is no objection to the jurisdiction of the admiralty in the case, that the steamboat *Planter* was to be employed in navigating waters beyond the ebb and flow of the tide. In the case of the steamboat *Jefferson* it was said by this court that there is no doubt the jurisdiction exists, although the commence-

ment or termination of the voyage may happen to be at some place beyond the reach of the tide. *Ib.*

9. (Dec., 1856.) In order to create a maritime lien for supplies furnished to a vessel, there must be a necessity for the supplies themselves, and also that they could be obtained only by a credit upon the vessel. *Pratt v. Reed*, 19 How. 359.

10. Hence, where a running account for coal was kept with a vessel trading upon the lakes, the master of which was also the owner, it does not appear that the coal could be procured only by creating a lien upon the vessel. *Ib.*

11. In a contest, therefore, between a libellant for supplies and the mortgagees of the vessel, the latter are entitled to the proceeds of sale of the boat. *Ib.*

12. This is under the general admiralty law. No opinion is expressed as to the effect of the local laws of the states. *Ib.*

13. (Dec., 1858.) A rule in admiralty, adopted at the present term, takes from the District Courts the right of proceeding *in rem* against a domestic vessel, for supplies and repairs which had been assumed upon the authority of a lien given by state laws. *Maguire v. Card*, 21 How. 248.

14. The reason of the rule explained. *Ib.*

15. (Oct., 1874.) Liens granted by the laws of a state, in favor of material-men, for furnishing necessities to a vessel in her home port in said state, are valid, though the contract to furnish them is a maritime contract, and can only be enforced by proceedings *in rem* in the District Courts of the United States. *The Lottawanna*, 21 Wall. 559.

16. (May, 1815.) The admiralty has jurisdiction of suits in favor of material-men. *The Jerusalem Catara*, 2 Gall. 345.

17. (Sept., 1855.) Property in the custody of the law of a state, under an attachment, cannot be arrested by a warrant from a District Court, sitting in the admiralty, in a proceeding to enforce the lien of a material-man; consequently the District Court cannot proceed *in rem*; and if it does so, its decree is erroneous. *The Oliver Jordan*, 2 Curt. C. C. 414.

18. (Oct., 1861.) A contract to furnish materials for the construction of a vessel, even where the same is built upon the shores of tide waters, and designed for use upon the navigable waters of the sea, is not within the admiralty jurisdiction of the United States courts. *Young v. Ship Orpheus*, 2 Cliff. 29.

19. (Oct., 1826.) The District Courts have a general admiralty jurisdiction, in suits by material-men, *in rem*. In cases of foreign ships, or ships of another state, the maritime law gives the lien. But in cases of domestic ships, no lien is implied; but if the local law gives a lien, it may be enforced in the District Courts. *Ship Robert Fulton*, 1 Paine, 620.

20. When the District Courts and state courts have a concurrent jurisdiction *in rem*, the right to maintain the jurisdiction attaches to that tribunal which first exercises it and takes possession of the thing. *Ib*.

21. (Oct., 1853.) Where a contract was made upon the land, between the owner of a vessel and a ship-builder, for her repair by the latter, in his ship-yard on the land, — *Held*, that an action *in personam* would not lie, in the admiralty, to recover for damage to the vessel, caused by the negligence of the ship-builder in hauling the vessel up on ways to be repaired. Neither the contract nor the service is maritime. *Ransom v. Mayo*, 3 Blatchf. 70.

22. (Oct., 1853.) An action *in rem* cannot be maintained against a vessel to recover damages for the breach of a contract to furnish her with materials or supplies, where the breach arises out of the master's refusal to accept them. *The Cabarga*, 3 Blatchf. 75.

23. (Sept., 1856.) Where the owner of a ship-yard hauled up a vessel on his ways, charging for that service, and also a *per diem* for the time she was on the ways while being repaired by another person, — *Held*, that the service was one rendered in the repair of the vessel; and that the admiralty had jurisdiction of a libel *in personam* to recover for the service. *Wortman v. Griffith*, 3 Blatchf. 528.

24. The nature of a contract or service, and not the question whether the contract is made, or the service is rendered, on the land or on the water, is the proper test in determining whether the admiralty has or has not jurisdiction. *Ib*.

25. (Sept., 1859.) The District Court has no jurisdiction to enforce, in a suit *in rem*, in admiralty, a claim for materials and labor for the repair of a steamboat engaged in running upon waters wholly within the limits of the state of New York. *The Troy*, 4 Blatchf. 355.

26. (Oct., 1824.) If the subject-matter of a contract concern the navigation of the sea, it is a case of admiralty and maritime

jurisdiction, although the contract be made on land. Such are the contracts of material-men. *Zane v. Brig President*, 4 Wash. 453.

27. (Oct., 1832.) An account for provisions furnished to the owner or commander of a vessel, or for articles for her use when not on a voyage or in a foreign port, is not within the admiralty jurisdiction of the District Court, either as a substantive distinct claim, or as an offset to a libel for seamen's wages. *Bains v. Schooner James and Catherine*, Baldw. 544.

28. (Nov., 1857.) If a contract be the ordinary one for repairs or supplies to a domestic ship, and the only matter in dispute be to whom the credit was given and who is liable for the amount, it will be a case for admiralty jurisdiction; and the admiralty court may determine whether the owner of the ship, or certain anticipated and contingent partners, are liable for such repairs and supplies. *Turner v. Beacham*, Taney's Dec. 583.

29. But where there was inseparably connected with a maritime contract of this sort, and forming part of it, an agreement by the contractor for the repairs and supplies, to become a partner in a company to be formed to purchase the vessel, — *Held*, that a contract to form a partnership to purchase a vessel is not a maritime one; a court of admiralty has no right to decide whether such a contract is legally or equitably binding, nor to adjust the accounts and liabilities of the different partners. *Ib.*

30. It is a clear rule of admiralty jurisdiction, that, although the contract which the party seeks to enforce is maritime, yet, if he has connected it inseparably with another contract over which the court has no jurisdiction, and they are so blended together that the court cannot decide one, with justice to both parties, without disposing of the other, he must resort to a court of law, or a court of equity, as the case may require; and the admiralty court cannot take jurisdiction of the controversy. *Ib.*

31. The admiralty court cannot adjust the rights and liabilities of the parties upon one portion of such a contract, and leave the other to be litigated in another court. *Ib.*

32. (Oct., 1872.) Under Rule 12 in admiralty, as amended by the Supreme Court at the December Term, 1871, a libel can be maintained for repairs and supplies furnished to a domestic vessel at the home port. *The Selt*, 3 Biss. 344.

33. The alteration of rule 12 was intended to place contracts

for repairs and supplies for all vessels on an equality as to proceeding in admiralty, not to abrogate the distinction between a domestic contract and a maritime lien. The alteration applies to the character of the process to be used, not to the question of jurisdiction. *Ib.*

34. (Aug., 1840.) By the general marine law of Europe, material-men have a privileged lien on a vessel for repairs and supplies furnished for the vessel. But by the maritime laws of this country they have no lien when the repairs are made and the supplies are furnished for a vessel in a port of the state to which she belongs, unless it is allowed by the local law. *Davis v. Child*, 2 Ware, 78.

35. Where the repairs are made, or the supplies furnished for a vessel in a port of a state to which she does not belong, she is considered a foreign vessel, and the rule of the general maritime law prevails. *Ib.*

36. A person who lends money to be employed in the repairs of a vessel, or to furnish her with supplies, has the same privilege against the vessel that material-men have. He is considered as giving credit both to the ship and to the owners. The ship is hypothecated to him for his security, and he may maintain, in the admiralty, either a libel *in rem* against the vessel, or a libel *in personam* against the owners. *Ib.*

37. Whether this principle be supposed to have been borrowed from the Roman law, or to have had an independent origin in the commercial usages of the middle ages, it appears to be equally unquestionable in one case as in the other. *Ib.*

38. The admiralty has a general jurisdiction to enforce all maritime liens. *Ib.*

39. The admiralty has no direct jurisdiction over trusts, although they may relate to maritime affairs. If the libellant states a trust as the foundation of his suit, he states himself out of court. *Ib.*

40. Nor has the admiralty any jurisdiction over matters of account, merely as accounts, although they may arise exclusively out of maritime transactions. It can take cognizance of accounts only as incidental to other matters over which it has jurisdiction. *Ib.*

41. Nor has the admiralty jurisdiction to enforce the specific performance of an agreement relating to maritime affairs. *Ib.*

42. (Feb., 1863.) Equitable co-owners of a vessel, who are also material-men, cannot maintain a libel in admiralty against the other co-owners to recover their bill for supplies, if their claim constitutes a portion of the accounts of the part-owners. In such case admiralty has no jurisdiction. *Hall v. Hudson*, 2 Sprague, 65.

43. (Nov., 1829.) A material-man cannot maintain an action *in personam* in admiralty, where a note or other obligation has been taken for the demand. *The Hilarity*, 1 Blatchf. & H. Adm. 90.

44. (Nov., 1830.) Courts of admiralty in this country are not limited in their jurisdiction by the rules of the common law. *The Stephen Allen*, 1 Blatchf. & H. Adm. 175.

45. Materials furnished to a vessel in another state than that to which she belongs create a lien which is enforced in admiralty under the general maritime law. *Ib.*

46. For materials furnished a vessel in her home port, a lien is created, if at all, only under the state law, which lien is enforced, however, in the admiralty courts. *Ib.*

47. (Nov., 1849.) Work done upon a vessel in the dry dock, in scraping her bottom preparatory to coppering her, is not of a maritime character; and compensation for such labor cannot be recovered in a court of admiralty. *Bradley v. Bolles*, Abb. Adm. 569.

48. (Aug., 1867.) Where several libels were filed against a ship by material-men, and the vessel was sold, and application was made to the court to decree payment out of the proceeds, the last libel filed being to enforce a lien given by the law of the state of New York, — *Held*, that the court had no jurisdiction to enforce the state lien. *The Ship Adele*, 1 Ben. 309.

49. (Dec., 1867.) *Held*, that the twelfth Admiralty Rule of the Supreme Court was only intended to regulate the practice of joining ship, freight, owner, and master in one suit; and that the question of the right to sue ship, or freight, or master, or owner, for supplies or repairs, does not depend on the twelfth Rule, but on the general admiralty and maritime law. *The Brig Eledona*, 2 Ben. 31.

50. (Nov., 1837.) By the general maritime law, a lien for materials furnished exists against foreign ships and those of other states of the Union, which may be enforced in the admiralty independently of any bottomry bond. *Sarchet v. The Sloop Davis*, Crabbe, 185.

51. (1796.) Supplies to a foreign vessel in a neutral port will constitute a lien on the vessel, whereof a court of admiralty has jurisdiction. *North & Vesey v. Brig Eagle*, Bee, Adm. 78.

52. (1798.) Of three several sums advanced for repairs and outfit of this vessel, one only could attach as a sufficient lien to give jurisdiction to the admiralty; and that security having been changed, the libel was dismissed *in toto*. *O'Hara et al. v. Ship Mary*, Bee, Adm. 100.

53. (1800.) The contract for repairs being made on land, and the owners being represented on the spot by a consignee who has funds, a plea to the jurisdiction of the court of admiralty must avail. *Pritchard & Co. v. Schooner Lady Horatia*, Bee, Adm. 167.

54. (July, 1855.) A question of jurisdiction being a preliminary inquiry, it is proper that it should be brought to the consideration of the court at the earliest opportunity. *Wick v. The Schooner Samuel Strong*, Newb. Adm. 187.

55. The District Courts of the United States have a general admiralty jurisdiction *in rem*, in suits brought by material-men against foreign ships, and in cases of domestic ships where the local law gives a lien. *Ib.*

56. The act of the legislature of Ohio entitled "An act providing for the collection of claims against steamboats and other water crafts, and authorizing proceedings against them by name," passed Feb. 26, 1840, and the act explanatory thereof, passed Feb. 24, 1848, does not create a lien; it only affords a remedy. These statutes, being in derogation of the common law, should be construed strictly. *Ib.*

57. (1856.) When the general maritime law gives the mechanic or material-man a lien for labor and materials in the building of a vessel, the admiralty has jurisdiction to enforce it by a process *in rem*, even before the vessel is launched or employed in navigation. *Parmlee v. The Propeller Charles Mears*, Newb. Adm. 197.

58. Independent of the act of 1845, extending the jurisdiction of the District Courts upon the lakes, the maritime law has the same application to cases upon the lakes as it has to those upon tide waters, both as to jurisdiction and to forms of procedure and practice. *Ib.*

59. (Sept., 1856.) Under the Judiciary Act of 1789, the

courts of the United States have cognizance of all civil cases of admiralty and maritime jurisdiction, exclusive of the state courts, except as to common-law remedy. *Ashbrook v. The Steamer Golden Gate*, Newb. Adm. 296.

60. The admiralty and maritime jurisdiction of the United States *in rem* is exclusively in the United States courts. *Ib.*

61. There is no concurrent jurisdiction *in rem* in admiralty cases between the courts of the United States and of the several states. *Ib.*

62. Where, as in this case, a material-man has a lien upon a vessel under the general maritime law of the United States, he has a right to enforce that lien by a suit in the United States court, although the vessel may have been subsequently seized and sold under the Missouri act concerning boats and vessels. *Ib.*

63. Where a material man has no lien under the general maritime law, but has a lien under the state law, and the same law provides certain proceedings by which that lien may be divested, if those proceedings are had his lien is divested, and he cannot sue in the United States court. *Ib.*

64. (Sept., 1874.) By the law of England previous to the statute of 3 and 4 Vict., no lien existed for supplies furnished domestic vessels. *The Champion*, 1 Brown, 520.

65. Whether such a lien existed with respect to foreign vessels, or whether the court of admiralty had jurisdiction to enforce it, seems never to have been settled prior to the passage of the act of 3 & 4 Vict. This statute, was, however, simply declaratory of the maritime law with respect to the existence of the lien as it was prior to its passage, and vested jurisdiction to enforce it in the admiralty courts. *Ib.*

66. Want of jurisdiction to enforce a lien in any particular locality is not fatal to the existence of the lien. The lien exists by virtue of the general maritime law; it follows the ship wherever she goes, and may be enforced wherever there is jurisdiction to enforce it. *Ib.*

67. There is a lien in Canada for supplies furnished an American vessel, and a court of admiralty has power to enforce this lien. *Ib.*

Rule 13. — Mariners' Wages.

In all suits for mariners' wages, the libellant may proceed against the ship, freight, and master, or against the ship and freight, or against the owner or the master alone *in personam*.

1. (Feb., 1825.) The District Court has not jurisdiction of a suit for wages earned on a voyage in a steam vessel, from Shippingport, in the state of Kentucky, up the river Missouri, and back again to the port of departure, as a cause of admiralty and maritime jurisdiction. *The Thomas Jefferson*, 10 Wheat. 428.

2. The admiralty has no jurisdiction over contracts for the hire of seamen, except in cases where the service is substantially performed upon the sea, or upon waters within the ebb and flow of the tide. *Ib.*

3. But the jurisdiction exists, although the commencement or termination of the voyage is at some place beyond the reach of the tide. It is sufficient if the service is essentially a maritime service. *Ib.*

4. The act of 1790, ch. 29, for the government and regulation of seamen in the merchant service, confines the remedy in the District Courts, to such cases as ordinarily belong to the admiralty jurisdiction. *Ib.*

5. (Jan., 1831.) Over the subject of seamen's wages the admiralty has an undisputed jurisdiction *in rem* as well as *in personam*; and wherever the lien for wages exists and attaches upon the proceeds, it is the familiar practice of that court to exert its jurisdiction over them, by way of monition to the parties holding the proceeds. This is familiarly known in the cases of prize, and bottomry, and salvage, and is equally applicable to the case of wages. The lien will follow the ship and its proceeds into whose hands soever they may come by title or purchase from the owner. *Sheppeard v. Taylor*, 5 Pet. 675.

6. (Jan., 1837.) The jurisdiction of courts of admiralty is limited, in matters of contract, to those, and those only, which are maritime. *Steamboat Orleans v. Phœbus*, 11 Pet. 175.

7. The case of the *Steamboat Jefferson*, 10 Wheaton, 429, 6 Cond. Rep. 175, cited and approved. *Ib.*

8. (May, 1827.) A father is entitled to the services of his minor children, and he may sue in the admiralty for wages

earned by such children by maritime services. *Plummer v. Webb*, 4 Mason, 380.

9. A contract of a special nature is not cognizable in the admiralty merely because the consideration of the contract is maritime service. The whole contract must, in its essence, be maritime, or for compensation for maritime services. *Ib.*

10. (Feb., 1872.) Article 10 of the treaty between the United States and the King of Prussia, of May 1, 1828, (8 Stat. at Large, 378, 382,) provides, that the consuls, vice-consuls, and commercial agents of each party "shall have the right, as such, to sit as judges and arbitrators, in such differences as may arise between the captains and crews of the vessels belonging to the nation whose interests are committed to their charge, without the interference of the local authorities," subject to the right of the contending parties "to resort, on their return, to the judicial authority of their country," and to the right of the consuls; vice-consuls, or commercial agents to require the assistance of the local authorities, "to cause their decisions to be carried into effect or supported." The crew of a Prussian vessel sued her *in rem*, in admiralty, in the District Court, to recover wages alleged to be due to them. The master of the vessel answered, denying the debt, invoking the protection of said treaty, denying the jurisdiction of the court, and averring that the claim for wages had already been adjudicated by the Prussian consul at New York. The consul also protested formally to the court against the exercise of jurisdiction. The case was tried in the District Court, and it appeared that the consul had adjudicated on the claim for wages. The District Court decreed in favor of the libellants. *Held*, that the District Court had no jurisdiction of the case. *The Elwine Kreplin*, 9 Blatchf. 438.

11. (Oct., 1852.) The exercise of admiralty jurisdiction in suits by foreign seamen for wages is matter of comity rather than of duty, and, generally speaking, is exercised only under such circumstances as might infer the presumption of a request from the foreign state; as, for example, where a voyage is ended or broken up, and the seamen discharged; or where there is strong reason to believe that there would be a failure of remedy, in case the mariners were compelled to await an opportunity of obtaining redress in their own courts. *Gonzales v. Minor*, 2 Wall. Jr. 348.

12. (April, 1859.) Where it appears from the evidence that the names of the seamen are used in the libel as claimants for wages, and that they had assigned their claims, and that the assignee was the sole party in interest, the libel in the names of the seamen will be dismissed. *Logan v. Steamboat Æolian*, 1 Bond, 267.

13. (Oct., 1868.) The assignee of seamen's claims for wages has no maritime lien for those claims, and can have no standing in a court of admiralty. *Rusk v. Steamboat Freestone*, 2 Bond, 235.

14. (June, 1877.) The remedy given to seamen by sections 4546, 4547 of the Revised Statutes of the United States, as preliminary to the filing of a libel for wages, is not exclusive, but cumulative merely. *The Waverly*, 7 Biss. 465.

15. A libel for seamen's wages may be filed, and process for the arrest of a vessel obtained, without resort to the preliminary proceedings authorized by said sections. *Ib.*

16. Those sections examined and construed in connection with sec. 6 of the act of 1790. *Ib.*

17. The common-law rule, that a statutory remedy which does not negative the remedy at common law is cumulative, is applicable to remedies under the maritime law. *Ib.*

18. (Aug., 1874.) A court of admiralty will not decline jurisdiction of a suit by foreign seamen, against a foreign vessel, to recover wages, where it appears that the voyage has been completed or broken up, or the seamen have been discharged, by the wrongful act of the master. *The Hermine*, 3 Sawyer, 80.

19. *Seemle*, that the court will not decline jurisdiction, where it appears that the seamen have been discharged with their own consent before the expiration of the voyage, without the payment of wages already earned, or any agreement or understanding concerning them. *Ib.*

20. (Feb., 1842.) No statute prohibits the filing of any libel within ten days after the discharge of the cargo. *Francis v. Bassett*, 1 Sprague, 16.

21. (Oct., 1842.) The statute which precludes a seaman from having admiralty process for his wages against the vessel until ten days after the discharge of the cargo, does not affect his right to proceed *in personam*. *The Commerce*, 1 Sprague, 34.

22. (April, 1858.) The District Court may exercise juris-

diction against a British vessel, in favor of a British subject residing in the British dominions, but is not bound to do so. *Barque Havana*, 1 Sprague, 402.

23. By the maritime law, a master has no lien on his ship for his wages. By statute of 17 & 18 Vict. ch. 104, such a lien is given to masters of British vessels. The lien so given may be enforced in the admiralty courts of the United States. *Ib.*

24. (Feb., 1868.) The admiralty has jurisdiction of a libel by mariners for their wages, against a vessel plying on navigable waters, though these waters are entirely within one state. *The Sarah Jane*, 1 Lowell, 203.

25. Some cases on the subject of the jurisdiction in admiralty considered. *Ib.*

26. (April, 1871.) A libel brought in the United States against a British vessel for wages, by British sailors shipped for a voyage ending in a home port, will not be entertained, against the protest of the British consul, in the absence of special circumstances, such as a clear deviation from the voyage described in the articles, cruelty, or the breaking up of the voyage, although the court may doubt the validity of the articles. *The Becherdass Ambaidass*, 1 Lowell, 569.

27. (Sept., 1872.) A British shipmaster may proceed in this court for his wages against the British ship in which he served. *The Havana*, 1 Sprague, 402, followed. *The Pawashick*, 2 Lowell, 142.

28. The court will take jurisdiction of such a suit between foreigners, if the voyage is ended, and there is no contract binding the parties to another jurisdiction, and no reason given why justice cannot be done here. *Ib.*

29. (Oct., 1829.) By the act of Congress of July 20, 1790, s. 6 (1 Stat. 133), a seaman is restricted from bringing an action for wages against a vessel, in her port of delivery, until ten days after her cargo is discharged, unless she is about to proceed to sea before the expiration of the ten days. *The Cypress*, 1 Blatchf. & H. Adm. 83.

30. Whether the seaman must wait ten days in case of an absolute discharge by the master, *quere*. *Ib.*

31. (May, 1830.) Under the sixth section of the act of July 20, 1790 (1 Stat. 133), in order that admiralty process may issue within ten days after the arrival of the vessel, it is sufficient to

show a reasonable ground of belief that the vessel is about to proceed to sea within the ten days. *The Trial*, 1 Blatchf. & H. Adm. 94.

32. (July, 1831.) A hand on board a sloop of over fifty tons burthen, plying on the Hudson River between New York and Catskill, is a seaman; and any action *in personam* brought by him against the master and owner of the sloop to recover his wages is within the jurisdiction of this court. *Martin v. Acker*, 1 Blatchf. & H. Adm. 279.

33. (Nov., 1844.) A mariner rendering services on board of a vessel, carrying coal between Philadelphia and New York, upon tide-waters, though she be stripped of sails and masts, and be towed by steamboats, may proceed *in rem* against such vessel for his wages. *The Coal Boat D. C. Salisbury*, Olc. Adm. 71.

34. (Oct., 1845.) The federal courts have jurisdiction of actions for wages for services on board foreign vessels. *The Brig Napoleon*, Olc. Adm. 208.

35. These actions will be entertained of right in behalf of American seamen against foreign vessels, owners, or masters; and will also be readily sustained in behalf of foreign seamen against masters or owners of foreign vessels, when the voyage terminates or is broken up in an American port, or foreign seamen are discharged from a foreign ship there, and are necessitous. *Ib.*

36. (Nov., 1845.) Courts of a foreign power will not take cognizance of the claims of seamen for their wages, except in cases of flagrant wrong, or suffering on their part, but not upon an alleged breach of contract, much less to decide upon *quantum meruit*. They should seek redress from their own consul. *Graham v. Hoskins*, Olc. Adm. 224.

37. Services rendered on board a ship while at the dock in Liverpool does not give to the demand for wages a maritime character of which an admiralty court can take cognizance. *Ib.*

38. (March, 1847.) A seaman cannot maintain an action *in rem* for wages on board a small sailing craft plying on the Hudson River between Troy, Bristol, and the city of New York, if at all, after a year from the sale of the vessel to a *bona fide* purchaser without notice of the outstanding wages, especially if the seaman was present and knowing of the sale. *The Scow Bolivar*, Olc. Adm. 474.

39. When a seaman is hired to serve on a small vessel navigating the interior waters of the state, and he knows the residence and responsibility of the owner, he will be required to seek his remedy for wages in the municipal courts of the vicinage, at the risk of all costs if he arrests the vessel in this court. *Ib.*

40. This court may refuse to take cognizance of such case unless it be shown that the remedy in the local court is doubtful. *Ib.*

41. (May, 1847.) A claim for seamen's wages and a claim for moneys advanced to the use of the ship may be united in one action against the ship. *The Sloop Merchant*, Abb. Adm. 1.

42. A seaman who claims to recover both for wages and for moneys advanced to the ship's use may join in a libel *in rem* with a co-libellant claiming wages only. *Ib.*

43. Where the vessel is liable to two libellants for wages, for which, under the practice of the court, in respect to the consolidation of suits, they may be compelled to sue in common, they may join in one action *in rem*, not only in suing for the common demands, but also in respect to other claims which are peculiar to each. *Ib.*

44. The history of the distinction between proceedings *in rem* and *in personam*, reviewed. *Ib.*

45. Where both the vessel and the master or owner are conjointly liable, the personal remedy and the remedy against the vessel may be sought in one and the same action. *Ib.*

46. Rule 13 of the Supreme Court interdicts the blending of an action against the owner personally, with one against the vessel, for the recovery of wages. A claim for wages and for moneys advanced to the use of a vessel on the part of one libellant cannot be joined, in an action *in personam*, with a separate claim for wages alone on the part of another. *Ib.*

47. (April, 1848.) The admiralty courts of the United States will decline jurisdiction of controversies arising between foreign masters and crews, unless the voyage has been broken up or the seamen unlawfully discharged. *The Infanta*, Abb. Adm. 263.

48. It is expected that a foreign seaman, seeking to prosecute an action of this description in the courts of this country, will procure the official sanction of the commercial or political representative of the country to which he belongs; or that good reasons will be shown for allowing his suit in the absence of such approval. *Ib.*

49. (Jan., 1849.) The maritime courts of this country and of England are not without jurisdiction over actions, whether *in rem* or *in personam*, between foreigners. *Bucker v. Klorkgeter*, Abb. Adm. 402.

50. But, as a general rule, both the American and English courts will decline to entertain such actions, excepting where it is manifestly necessary that they should do so, to prevent a failure of justice. *Ib.*

51. A stipulation in shipping articles, by which the master and crew of a foreign vessel about to sail to this country agree that they will not sue in any courts abroad, but will refer all disputes to the courts of their own country for adjudication, is lawful and binding, and will, in general, be respected and enforced by the American courts. *Ib.*

52. But where the interests of justice require it to be disregarded, *e. g.*, where the voyage is broken up in an American port by some other cause than the wreck of the vessel, or where the man is discharged, or becomes entitled to a discharge by reason of improper treatment, the American courts will entertain a suit by a foreign seaman for his wages, notwithstanding his stipulation in the articles not to sue until his return home. *Ib.*

53. Under the practice in this country, the approval of the consul or other representative of the nation to which foreign seamen belong is not absolutely necessary to the maintaining of a suit between them. *Ib.*

54. *It seems* that a deviation from the voyage for which foreign seamen shipped is not a ground upon which our courts should entertain jurisdiction of a suit for wages, where, by the articles, the libellants have stipulated to sue in their own country only. *Ib.*

55. Unseaworthiness of a vessel releases the crew from obligation to sail with her; and on showing such condition of the vessel, and that they left her on that account, they may maintain an action *in personam* for wages here, although all parties are foreigners, and are under agreement not to sue while abroad. *Ib.*

56. (Jan., 1849.) A court of admiralty has not jurisdiction of an action to recover wages for services in a voyage upon a canal not connecting navigable lakes or different states or territories. *McCormick v. Ives*, Abb. Adm. 418.

57. Nor will the fact that a small portion of the voyage is

through public navigable waters give jurisdiction, if the main end contemplated by the contract was a service upon such canal. *Ib.*

58. (Jan., 1849.) In an action by a minor to recover wages as seaman, the respondent is not entitled to require the appointment of a guardian *ad litem* or next friend for the libellant. *Wicks v. Ellis*, Abb. Adm. 444.

59. (Feb., 1849.) To impart a maritime character to personal services rendered in or upon a vessel, they must be connected with the reparation or betterment of the vessel, or be rendered in aid of her navigation directly by labor on the vessel, or in sustenance and relief of those who conduct her operations at sea. *Gurney v. Crockett*, Abb. Adm. 490.

60. A person employed to visit a vessel at anchor, from time to time, to see to her safety, ventilate her, try her pumps, and the like, cannot maintain a suit in admiralty to recover his compensation for such services. *Ib.*

61. But if, in the course of such employment, a necessity arises that such keeper should get the ship under way and navigate her from one anchorage to another, this is a maritime service for which he may recover in a court of admiralty. *Ib.*

62. (May, 1867.) Admiralty courts allow a minor to recover in his own name wages earned in sea service, when the contract on which he sues was made personally with him, and it does not appear that he has any parent or guardian or tutor entitled to receive them. *The Schooner David Faust*, 1 Ben. 183.

63. A suit in admiralty, brought to recover wages before the time allowed in the sixth section of the act of 1790 has elapsed, is prematurely brought, and will be dismissed. *Ib.*

64. Where a seaman is discharged from a vessel, the discharge terminates the contract, and the provision for ten days' delay after the delivery of the cargo is released, and the seaman may proceed at once for his wages. *Ib.*

65. (June, 1867.) A libel was filed by a seaman to recover wages against a ship and freight money. The marshal made return to the process that he had not attached the vessel, but had attached the freight money in the hands of parties who held it. Prior to the service of the process, suit had been commenced in a state court against the owners of the vessel, in which warrants of attachment had been issued, under which the state

sheriff had seized the vessel. He held her under those attachments when the marshal came to seize her. He had also served copies of the warrants upon the parties who held the freight money, with notice that he attached it. On this state of facts the parties submitted to this court the question, whether there had been a valid attachment of the freight money by the marshal, so as to give this court jurisdiction to hear and determine the libel.

Held, that seamen have a paramount lien for their wages upon the freight money of the voyage, and that such lien is to be administered by a court of admiralty by the service of its attachment upon the freight money in the hands of the parties where it is found.

That, as against a lien of this character, the principle established by the Supreme Court of the United States, in the case of *Taylor v. Carryl* (20 How. 483) ought not to be extended.

That the application of the principle of that case to an attachment issuing from a state court against a vessel would only work delay in the enforcement of a sailor's lien for wages upon her, but that the application of it to an attachment against freight money would work the entire destruction of the lien.

That the possession of the freight money by the sheriff, constructive or otherwise, was not such as the possession of the vessel in *Taylor v. Carryl*, or such as prevented the marshal from levying his process upon it, so as to give this court jurisdiction of it *in rem*.

That the jurisdiction of this court is therefore sustained. *The Sailor Prince and her Freight Money*, 1 Ben. 234.

66. (Dec., 1870.) In admiralty, minors are allowed to sue for wages in their own names. *The Bark Elwin Kreplin*, 4 Ben. 413.

67. (June, 1877.) D. was hired as deck hand on a tug at \$30 a month, as he claimed. The tug sank at a pier, but was raised again, and after she was raised he worked on board in repairing her. Afterwards he filed a libel against her to recover wages for the whole time. The claimants deposited in court \$24.50 to meet his claim, besides costs, amounting in all to \$63.82, claiming that he was only entitled to \$20.

Held, that D. was entitled to recover \$15, for half a month's wages.

That the court had no jurisdiction in respect to his claim for services after the boat sank. *The Steamer Propeller M. M. Caleb*, 9 Ben. 159.

68. (April, 1879.) Seamen filed a libel against a British vessel to recover wages. The owners of the vessel objected to the court's entertaining jurisdiction of the cause, and the British consul also protested against it.

Held, that while, under such circumstances, the court would refuse to entertain jurisdiction unless there were special circumstances in the case, yet in this case, as none of the seamen belonged in Nova Scotia, where the vessel belonged, and when the libel was filed it was uncertain for what port the vessel would sail, and when the cause was heard the vessel had finished her voyage and it was uncertain where she was, a refusal to entertain the cause would be practically a denial of justice, and the same would be entertained.

That section 190 of the British Merchant Shipping Act did not preclude the sailors from maintaining the action. *The Bark Lilian M. Vigus*, 10 Ben. 385.

69. (1790.) Two mariners belonging to the brig *St. Oloff*, a Swedish vessel, were, by decree of the court, allowed their wages and discharged from any further services on board the brig, because of the deviation from the voyage for which they shipped, and because the conduct of the captain with regard to them had been so cruel and unwarrantable by the maritime law as would of itself have dissolved the contract,—the rights of humanity being superior to the specific laws and customs of any nation. *Weiberg and Casterius v. The Brig St. Oloff*, 2 Pet. Adm. 428.

70. (1804.) The dispute between the master and the mate, in this cause, was concerning the mate's wages. Process or a citation was issued against the master and owner. There were accounts of moneys and articles of traffic and dealing between the captain and mate, but they were not considered within the jurisdiction of the admiralty, except so far they were connected with the claim for wages. *Atkins v. Burrows*, 1 Pet. Adm. 244.

71. (1804.) The cook and the steward are authorized to sue in the admiralty court, as mariners and part of the crew. *Black v. The Ship Louisiana*, 2 Pet. Adm. 269.

72. (1806.) I do not find any precedent or authority to warrant my granting the prayer of the master's petition, in the

case before me, for his wages. His contract is clearly personal, and made with, and on the credit of, the owners resident here, and not on that of the ship. He is the owners' agent and responsible to them for his acts, particularly those relating to mariner's contracts, and other transactions in the affairs of the ship. If in anything he has done wrong, the owners may retain, and the contest is cognizable in another jurisdiction. *Gardner v. The Ship New Jersey*, 1 Pet. Adm. 228.

73. I have paid out of surplus the wages due to masters of Spanish ships, because the laws of Spain entitle them thereto; and I always am regulated, in the affairs of foreign ships, by the laws of the country to which they belong. I could discover no precedent for this in the laws of any other country. *Ib.*

74. (Nov., 1828.) A seaman whose wages have been paid up to the termination of a voyage, but who afterwards remains on board of a vessel moored at the wharf, has no claim for services which a court of admiralty will enforce. *Phillips et al. v. The Ship Thomas Scattergood*, Gilp. 1.

75. (May, 1830.) Where a portion of a vessel which has been wrecked is saved by the exertions of the seamen, brought to the United States, and sold, they have a lien on the proceeds for their wages. *Brackett et al. v. The Brig Hercules*, Gilp. 184.

76. (Nov., 1830.) A contract for wages on a voyage between ports of adjoining states and on the tide-water of a river or bay, is within the jurisdiction of the District Court, and may be enforced by a suit *in rem* in the admiralty. *Smith v. The Sloop Pekin*, Gilp. 203.

77. (Nov., 1834.) A contract for wages on board of a steamboat plying between ports of adjoining states, on a navigable tide river, may be enforced by a suit *in rem* in the admiralty. *Wilson v. The Steamboat Ohio*, Gilp. 505.

78. The pilot, deck-hands, engineer, and firemen on board of a steamboat are entitled to sue in the admiralty for their wages. *Ib.*

79. (Nov., 1834.) To justify a person employed on board a vessel in suing in the admiralty for his wages, the services rendered must contribute to the preservation of the vessel or of those employed in her navigation. *Trainer and Crawshaw v. The Boat Superior*, Gilp. 514.

80. Musicians on board of a vessel, who are hired and employed as such, cannot enforce the payment of their wages by a suit *in rem* in the admiralty. *Ib.*

81. (Nov., 1834.) Waters within the ebb and flow of the tide are to be considered as the sea. *Thackarey v. The Farmer*, Gilp. 524.

82. In cases of torts, injuries, and offenses, locality brings them within the admiralty jurisdiction; but in cases of contract it is also necessary that the subject-matter be of a maritime nature. *Ib.*

83. A contract relative to service on board of a vessel, and on the sea or waters within the ebb and flow of the tide, cannot be enforced in the admiralty unless the service is essentially maritime service. *Ib.*

84. Steamboats and lighters engaged in trade or commerce on tide-water, and the seamen employed on board, are within the admiralty jurisdiction; but not ferry boats or those engaged in ordinary traffic along the shore. *Ib.*

85. A contract to pay for labor on board a vessel employed in carrying fuel to the city of Philadelphia from the opposite shore of the Delaware River cannot be enforced by a suit *in rem* in the admiralty. *Ib.*

86. (Aug., 1836.) Where suit has been brought in a state tribunal for seamen's wages, and discontinued, this court will sustain a libel for the same cause of action. *Bingham v. Wilkins*, Crabbe, 50.

87. (1803.) An agreement by the captain of a vessel to pay wages is suable in the admiralty; but another stipulation in the same contract, to pay a sum of money if the voyage should be altered or discontinued, must be enforced at common law. *L'Arina v. Manwaring*, Bee, Adm. 199.

88. (1781.) Mariners enlisting on board a ship of war or vessel belonging to a sovereign independent state cannot libel against the ship for wages due. *Pierre de Moitez v. The South Carolina*, Bee, Adm. 422.

Rule 14. — Pilotage.

In all suits for pilotage the libellant may proceed against the ship and master or against the ship, or against the owner alone or the master alone *in personam*.

1. (Jan., 1836.) Suits for pilotage on the high seas, and on waters navigable from the sea, as far as the tide ebbs and flows,

are within the admiralty and maritime jurisdiction of the United States. The service is strictly maritime, and falls within the principles already established by the court in the case of *The Thomas Jefferson* (10 Wheaton's R. 428) and *Peyroux v. Howard* (6 Peters's R. 682.) *Hobart v. Drogan*, 10 Pet. 108.

2. The jurisdiction of the District Courts of the United States, in cases of admiralty and maritime jurisdiction, is not ousted by the adoption of the state laws by the act of Congress. The only effect is to leave the jurisdiction concurrent in the state courts, and, if the party should sue in the admiralty, to limit his recovery to the same precise sum to which he would be entitled under the state laws adopted by Congress, if he should sue in the state courts. *Ib.*

3. (Oct., 1881.) The District Court sitting in admiralty will not be restrained from proceeding in a suit to recover pilotage. [Petition for writ of prohibition.] *Ex parte Hagar*, 14 Otto, 520.

4. (Oct., 1818.) The admiralty has jurisdiction *in personam*, as well as *in rem*, for pilotage earned in piloting ships to, from, or on the sea. *Schooner Anne*, 1 Mason, 508.

5. (May, 1827.) The rule of the common-law courts of England, that a pilot cannot sue in admiralty on a contract for services to be performed on a navigable river, or waters within the body of a county, does not prevail here. Pilotage services partake so much of a maritime character, that, under our system and the grant of admiralty and maritime jurisdiction to the District Courts, such a suit may be maintained in those courts, in the absence of any legislative provision on the subject of pilotage. *Schooner Wave v. Hyer*, 2 Paine, 131.

6. But the jurisdiction of the District Courts is not exclusive over such cases. There is nothing in the nature of the remedy, or of the subject-matter, which can take away the jurisdiction of the common-law courts. And the saving, in the Judiciary Act, of the right to a common-law remedy, is a full recognition of a concurrent jurisdiction, in those courts, of cases which may be denominated admiralty and maritime causes, where they before had such jurisdiction. *Ib.*

7. Nor is the mere grant, in the Constitution, of cases of admiralty and maritime jurisdiction to the courts of the Union, necessarily exclusive, nor a denial of the exercise of jurisdiction by the courts of the state in such cases. *Ib.*

8. In the state of New York, however, the District Courts have no jurisdiction at all over cases of pilotage service. Congress has adopted the law of the state regulating pilots; and that law has provided for compensating pilots, for both ordinary and extraordinary services of all kinds; and has given to the Board of Wardens power to decide what such compensation shall be. And Congress having adopted the state law previously to the passage of the Judiciary Act, cases of pilotage service were not embraced in the general obligation of admiralty and maritime jurisdiction, to the District Courts within the state. *Ib.*

9. (Jan., 1871.) The state statute gives a pilot half pilotage as a compensation for tendering his services to pilot a ship out over the Columbia River bar, in case the same are refused. *Held*, that such a claim is a claim for pilotage, which, by the general maritime law, is a lien upon the vessel, and the same may be enforced by a suit in admiralty. *The California*, 1 Sawyer, 463.

10. (Oct., 1867.) The admiralty has jurisdiction to enforce a lien against a vessel given by a state statute in certain cases, to a pilot whose services have been tendered and refused. *The Brig America*, 1 Lowell, 176.

11. The twelfth admiralty rule prescribed by the Supreme Court, which, as amended, prohibits the District Courts from enforcing certain liens created by state statute, has no application to pilots; for they come under the fourteenth rule. *Ib.*

12. (April, 1831.) Courts of admiralty have jurisdiction of suits for pilotage. *The Wave*, 1 Blatchf. & H. Adm. 235.

13. (Sept., 1869.) Where a pilot boarded a ship, some thirty miles from Barnegat, and the master of the ship proposed that his employment should not commence till the vessel reached pilot ground, whereupon the pilot went to bed, and was called when Sandy Hook hove in sight, and then took charge of the vessel, and thereafter libeled her for the amount of off-shore pilotage, awarded by the laws of the state of New York, — *Held*, that the court had jurisdiction of the action. *The Bark Alaska*, 3 Ben. 391.

14. (March, 1871.) A court of admiralty has jurisdiction over an action brought by a pilot to recover the half pilotage declared by a state statute to be due to the first pilot who tenders his services to a vessel. *Banta v. McNeil*, 5 Ben. 74.

15. Cases arising *quasi ex contractu*, pertaining to navigation, are cases in admiralty. *Ib.*

Rule 15. — Collision.

In all suits for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, or against the master or the owner alone *in personam*.

1. (Dec., 1861.) To bring a case of collision within the admiralty jurisdiction of the Federal courts, it is not necessary to show that either of the vessels was engaged in foreign commerce or commerce between the states. *Propeller Commerce*, 1 Black, 574.

2. (Oct., 1880.) The courts of the United States, as courts of admiralty, have not exclusive jurisdiction of suits *in personam*, growing out of collisions between vessels while navigating the Ohio River. *Schoonmaker v. Gilmore*, 12 Otto, 118.

3. (April, 1835.) Whenever any collision arises between the owners of a vessel, it falls within the admiralty jurisdiction of the District Court to interfere so as to protect the rights of all. *Revens v. Lewis & Thomson*, 2 Paine, 203.

4. (Nov., 1845.) The admiralty court has jurisdiction in cases of collision happening upon tide-water in the Chesapeake Bay or the rivers emptying therein; the jurisdiction has been settled by the decision of this court, and has been acted upon on several occasions, and cannot now be considered as open for argument. *Taylor v. Harwood*, Taney's Dec. 437.

5. (July, 1874.) The admiralty jurisdiction of the United States courts extends to a tort committed by collision on an artificial ship canal connecting navigable waters which are within that jurisdiction. *Steamer Oler*, 2 Hughes, 12.

6. (Oct., 1853.) The libellant cannot join in this libel a demand *in rem* against the vessel, and one *in personam* against the owners. He may proceed *in rem* or *in personam*, or successively in each way, until he has full satisfaction; but he cannot blend the proceedings in one libel. *Ward v. The Ogdensburgh*, 5 McLean, 623.

7. (June, 1862.) Where a collision is the joint act of two steamboats, there can be no objection to the joinder of both as defendants in an action. *Atkinson v. Steamboat R. B. Hamilton*, 1 Bond, 536.

8. If each boat is charged with a distinct and separate act of collision, without any allegation of privity between them, or concert or unity of purpose, they cannot be joined in the same libel. *Ib.*

9. (Aug., 1873.) In case of a total loss of a cargo by collision, a libel may be brought by the insurer against the colliding vessel, after notice and proof of the loss and demand of payment, though without actual payment. *The Manistee*, 5 Biss. 381.

10. The insured having been fully satisfied for the loss, and not intervening or opposing the prosecution of the libel of the insurer, the carrier cannot be permitted to raise the objection of non-payment of the loss before libel brought. *Ib.*

11. (April, 1846.) Admiralty has jurisdiction in a cause of collision between vessels when the injury is received in a ship where the tide ebbs and flows between piers or wharves in this port. *The Bark Lotty*, Olc. Adm. 329.

12. (Dec., 1866.) An admiralty court has no jurisdiction over the "appropriate proceedings," to apportion the value of a vessel which has caused a collision among the parties who have suffered loss thereby, which are provided for by the fourth section of the act of Congress of March 3, 1851. *George Place et al. v. The Steamboat City of Norwich*, 1 Ben. 89.

13. (May, 1867.) Where, in a collision between a steamer and a schooner, both vessels were sunk and the steamer was afterwards raised and repaired, and this suit was brought by the owners of the schooner against the owners of the steamer, in which a decree was rendered for the libellants with an order of reference to a commissioner to ascertain the damage, and his report fixing such damage was confirmed by the court; and where the respondents thereupon applied to the court, on motion to reserve the final decree, that they might take "appropriate proceedings" to apportion the sum for which they might be liable among the parties entitled thereto under the provisions of the act of Congress of March 3, 1851, offering to the court proof of the value of their vessel and her freight, and that such value was exceeded by the amount of the claims for property destroyed in the collision, — *Held*, . . . that this court has no power to give them such relief in any form of proceeding. That power does not belong to its jurisdiction in admiralty, certainly not in a suit *in personam*, where neither the faulty ship and freight, nor

their amount or value, is within the control of the court, and where the court can render no judgment that will bind parties not before it, and cannot make parties of such as reside and remain out of the district. And the court has no equity powers adequate to granting such relief. *Wright v. Norwich & New York Transportation Co.*, 1 Ben. 156.

14. (Nov., 1867.) A Dutch schooner and a Russian bark came in collision in the North Sea, by which the schooner was sunk. The owners of the schooner libeled the bark. *Held*, that this court had jurisdiction of the action. *The Bark Jupiter*, 1 Ben. 536.

15. (Jan., 1868.) A suit to recover damages for a collision cannot properly be brought against a vessel *in rem*, and her owner *in personam*, unless her owner is also master. *The Propeller Richard Doane*, 2 Ben. 111.

16. All the owners of a vessel injured by a collision should be joined as libellants. *Ib.*

17. The case of *Newell v. Norton*, (3 Wallace, 257) discussed. *Ib.*

18. (June, 1871.) The owners of the schooner, who were carriers of the cargo, could recover for the damage to the cargo [by a collision], without joining the other owner of it as a libellant. *The Steamer Metis*, 5 Ben. 203.

19. (March, 1877.) This court has jurisdiction in a suit *in rem* in admiralty, for a collision of a vessel seized under process in the suit, in that part of the river St. Lawrence which is within the territorial limits of this district, without reference to the character of the vessel or of her voyage. *The Propeller East*, 9 Ben. 76.

20. (May, 1878.) The master of a vessel having charge and custody of her at the time of a collision may maintain an action to recover the damages caused by the collision, it appearing that the bringing of the action has been authorized and approved by all interested. The master's right of action in such a case is not affected by the fact that underwriters upon the vessel have paid the cost of the repairs which constitute a part of the demand sued for. *The Steam-tug Uncle Abe*, 9 Ben. 502.

21. (Oct., 1853.) Under Rule 15 of the admiralty, the libellant may proceed: 1st, against the ship and master; 2d, against the ship; 3d, against the owner alone; 4th, against the master

alone. A proceeding *in rem* against the ship and *in personam* against the owner, not being authorized by the rule, is prohibited. *Ward v. The Propeller Ogdensburgh*, Newb. Adm. 140.

22. (April, 1864.) The fact that, prior to the collision, an interest in the injured vessel had been transferred to an alien, and a forfeiture thereby incurred, does not prevent such alien owner from joining in the libel, the forfeiture never having been judicially declared by a condemnation. *The Nabob*, 1 Brown, 115.

23. (Jan., 1870.) The admiralty has jurisdiction of a collision between a canal-boat and a tug engaged exclusively in harbor service, and occurring upon navigable waters wholly within the body of a county. *The Volunteer*, 1 Brown, 159.

24. (Jan., 1874.) A joint action for collision cannot be maintained *in rem* against one vessel, and *in personam* against the owner of another. *The Young America*, 1 Brown, 462.

Rule 16. — Assault, &c.

In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *in personam* only.

1. (Oct., 1837.) An action for damages as for assault and battery against the master cannot be joined in the same libel with an action for wages, if it be excepted to. *Pratt v. Thomas*, 1 Ware, 437.

2. *Quære*, if not excepted to, whether the court may not adjudicate upon both in one libel, making in each case a separate decree. *Ib.*

Rule 17. — Marine Hypothecation.

In all suits against the ship or freight founded upon a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port for supplies or repairs or other necessities for the voyage, without any claim of marine interest, the libellant may proceed either *in rem*, or against the master or the owner alone *in personam*.

1. (Dec., 1854.) The courts of the United States, in the exercise of admiralty and maritime jurisdiction, cannot take cog-

nizance of questions of property between the mortgagee of a vessel and the owner. *Bogart v. Steamboat John Jay*, 17 How. 399.

2. The admiralty courts of England now exercise a more ample jurisdiction upon the subject of mortgages of ships; but it is under a statute of Victoria; and in the United States the admiralty and maritime jurisdiction remains as it was before. *Ib.*

3. (Oct., 1846.) A libel does not lie in the District Court to enforce the surrender or avoidance of a mortgage of a ship, on the ground that it has not been duly prosecuted, or the claims under it not seasonably made. *Dean v. Bates*, 2 Woodb. & M. 87.

4. The remedy, if any, in such case, is in chancery, and will not usually be settled there till the disputed rights of the parties under the instrument are first adjudicated on at law. *Ib.*

5. (Oct., 1846.) Whether a libel lies on a mere mortgage of a vessel, as a chattel to secure a debt, if arising out of a maritime contract and business, or not, is doubtful here, and is sustained in England now only under an express statute. *Leland v. Ship Medora*, 2 Woodb. & M. 93.

6. (Oct., 1846.) Where one advances money to the owners of a vessel, which is partly used in fitting her for the coming voyage, it is doubtful whether the mortgage to secure it, on the vessel, can be enforced in admiralty by a libel against her. If, before the case is decided, the sale of the vessel has been ordered on prior libels for voyages and a bottomry bond, and the claim of this libellant on the balance of the proceeds been put in and allowed, this libel will be dismissed without costs. *Deshon v. Ship Medora*, 2 Woodb. & M. 118.

7. (Sept., 1855.) A part owner, though ship's husband, has not a lien on the share of his tenant in common for advances and disbursements. If he had such a lien in equity, it would not enable a court of admiralty to take an account and enforce it. *The Larch*, 2 Curt. C. C. 427.

8. (April, 1805.) A bond executed as a hypothecation, but not upon the principles which govern such securities, cannot be enforced in a court of admiralty, but must be proceeded upon in a court of common law. *Hurry v. The Ship John & Alice*, 1 Wash. 293.

9. (July, 1868.) A person who, in one state, advances money to release a boat belonging in another state from the possession of the marshal for the former state, has a lien for the money so

advanced, which he can enforce *in rem* in a court of admiralty. *The J. R. Hoyle*, 4 Biss. 234.

10. (Nov., 1829.) A hypothecation of a vessel in the form of a mortgage, as security for supplies furnished in a foreign port, may be enforced *in rem* in the admiralty. *The Hilarity*, 1 Blatchf. & H. Adm. 90.

11. (July, 1833.) A contract, in order to be within the jurisdiction of admiralty, must be one which is to be performed upon the sea, or which has relation to a maritime service. *The Perseverance*, 1 Blatchf. & H. Adm. 385.

12. Where money was advanced to purchase a ship, and her bill of sale was deposited with the lender by way of security, with a power of attorney to him to sell the ship for his reimbursement, — *Held*, that such a contract was not cognizable in admiralty. *Ib.*

13. The party holding such a bill of sale acquired by its delivery to him no hypothecation of the vessel, or interest in her enabling him to maintain a petitory or possessory action. He took only a naked power to sell, which did not amount to a pledge *in præsentî*. *Ib.*

14. Admiralty cannot give relief by converting such contract into a hypothecation, nor does such contract carry with it any of the ingredients of a lien, either express or implied. *Ib.*

15. (Oct., 1867.) The admiralty has no jurisdiction to enforce the claim of a mortgagee of a vessel. Patrick stood before the court only as having the rights of mortgagee, and his libel, being a libel by a mortgagee against the proceeds of the vessel, could not be maintained. *The Ship Sailor Prince & her Freight*, 1 Ben. 462.

16. The court had no authority to adjudicate upon Patrick's title to the mortgages, which was contested by the other claimants. *Ib.*

17. (1798.) If the master borrow money for repairing damages to the vessel, done on the high seas, the admiralty has jurisdiction. *Bulgin v. Sloop Rainbow*, Bee, Adm. 116.

18. (May, 1855.) Where A., the master of a brig, puts into a foreign port by reason of a leak, and there borrows money from B., and draws a bill of exchange upon C., which bill is unpaid at maturity, and at the same time that the bill is drawn he also executes a mortgage or hypothecation, in which there is a special

stipulation that B. is not to take the usual marine risks in cases of bottomry and hypothecation, neither instrument establishes a lien upon the brig which can be enforced in the admiralty. *Maitland v. The Brig Atlantic*, Newb. Adm. 514.

19. Admiralty cannot enforce a claim for money which has been advanced on the personal credit of the vessel, owner, or master, in a suit *in rem*. *Ib.*

Rule 18.—Bottomry Bonds.

In all suits on bottomry bonds, properly so called, the suit shall be *in rem* only against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be *in personam* against the wrong-doer.

1. (Oct., 1814.) The admiralty courts of the United States will entertain jurisdiction *in rem* to enforce a bottomry bond executed in a foreign country, between subjects of a foreign country, when the ship is within the territory of the United States. *The Jerusalem*, 2 Gall. 190.

2. In what cases suits will be maintained between foreigners in our courts, and in what cases they will be remitted to their domestic forum. *Ib.*

3. The jurisdiction of the admiralty depends, not on the character of the parties, but on the subject-matter, whether maritime or not. *Ib.*

4. (May, 1835.) The admiralty has jurisdiction over all maritime contracts *in personam*, and also *in rem*, where there is a maritime lien or express pledge as security, and this embraces, of course, a bottomry bond given by the owner in the home port, where there is an express pledge as security. *Brig Draco*, 2 Sumn. 157.

5. (April, 1824.) The jurisdiction of courts of admiralty over contracts depends principally upon their subject-matter, and in cases of bottomry it is not the absolute necessity of the loan that gives the jurisdiction. *Sloop Mary*, 1 Paine, 671.

6. (July, 1866.) Where a vessel was carrying, under a charter-party, a cargo that was the property of the United States, and the general owner, through the master, retained the possession and navigation of the vessel, and the master, at a port of distress, executed a bottomry bond on both vessel and cargo, — *Held*, on a libel filed on such bond in admiralty against vessel and cargo, that the court had jurisdiction of the case as regarded the vessel, but that the cargo, being the property of and in the possession of the United States, was not subject to seizure or attachment, nor could a suit be instituted against the government in respect to it. *The Othello*, 5 Blatchf. 342.

7. (Feb., 1848.) A bottomry creditor may, by payment of the seamen's wages, entitle himself to a novation in their place for recovery of their demands against the vessel. *The Cabot*, Abb. Adm. 150.

8. (March, 1866.) Where a vessel under charter to the United States, whose owners were to victual and man her, took on board a load of property captured by the army of the United States, to bring it to New York; and, meeting with disaster on the voyage, the master took up money on a bottomry of the vessel and cargo; and on her arrival in New York a libel was filed to enforce the bottomry bond, and the vessel and cargo were seized by the marshal under the process; and, no appearance being entered for either vessel or cargo, the district attorney of the United States, before the return of the process, applied on affidavit for an order directing the release of the property and vacating the process, on the ground that government property was not subject to the process of the court, — *Held*, that whether the vessel could be considered as government property under the charter was doubtful, and that such a question should not be disposed of before appearance and on motion. *Cartwright & Harrison v. The Schooner Othello*, 1 Ben. 43.

9. That, though the cargo was government property, it had been put by the government into the custody of the master of the vessel, and it was doubtful whether granting the order would put the government into possession of it. *Ib.*

10. That the law of the case ought to be determined upon a hearing on issues properly and formally framed, instead of upon motion. *Ib.*

11. (Feb., 1840.) A bottomry bond given in a home port for

money not intended to be used for, nor actually applied to the purposes of the voyage, will not support a libel in this court. *Knight v. The Brig Attila*, Crabbe, 326.

Rule 19. — Salvage.

In all suits for salvage, the suit may be *in rem* against the property saved, or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the salvage service has been performed.

1. (Feb., 1796.) We are unanimously of opinion that the District Court had jurisdiction upon the subject of salvage, and that consequently they must have a power of determining to whom the residue of the property ought to be delivered. *McDonough v. Dannery et al.*, 3 Dall. 188, 198.

2. (Feb., 1804.) The courts of admiralty of the United States have jurisdiction in cases of salvage where all the parties are aliens, if the jurisdiction is not objected to. *Mason v. Ship Blaireau*, 2 Cranch, 240.

3. (Jan., 1838.) In cases purely dependent upon the locality of the act done, the admiralty jurisdiction is limited to the sea, and to the tide-water as far as the tide flows. Mixed cases may arise, and often do arise, where the act and services done are of a mixed nature, as where salvage services are performed partly on tide-waters and partly on shore, for the preservation of the property in which the admiralty jurisdiction has been constantly exercised to the extent of decreeing salvage. *United States v. Coombs*, 12 Pet. 72.

4. (Jan., 1841.) The case is within the jurisdiction of a court of admiralty. It is a question of salvage of a vessel which had been stranded on a reef in the ocean. The points in controversy are, whether salvage is due, and if due, how much; the admiralty is the only court in which such questions can be tried. *Houseman v. Schooner North Carolina*, 15 Pet. 41.

5. (Dec., 1859.) Where there was a contract for raising a sunken vessel upon certain stipulations, the party who raised the vessel cannot abandon it, and claim salvage in a court of admiralty. *Bondies v. Sherwood*, 22 How. 214.

6. (Dec., 1869.) Nothing short of a contract to pay a fixed

sum at all events, whether successful or unsuccessful, will bar a meritorious claim for salvage. *The Camanche*, 8 Wall. 449.

7. (Dec., 1869.) Personal property of the United States on board of a vessel for transportation from one point to another is liable to a lien for salvage services rendered in saving the property. *The Davis*, 10 Wall. 15.

8. Such lien cannot be enforced by the courts, by a suit against the United States. *Ib.*

9. Nor by a proceeding *in rem*, when the possession of the property can only be had by taking it out of the actual possession of the officers or agents of the government charged therewith. *Ib.*

10. It may be enforced by a proceeding *in rem*, where the process of the court can be enforced without disturbing the possession of the government, which, being thus compelled to appear in the court to assert its claim, must discharge the lien before the property will be delivered to it. *Ib.*

11. (Oct., 1879.) Salvors cannot, in the same libel, proceed *in rem* against a vessel and *in personam* against the consignees of her cargo. *The Sabine*, 11 Otto, 384.

12. (Oct., 1849.) Where a vessel was stranded and salvage services were rendered by another vessel in relieving her, in pursuance of a written contract between the owner of the latter and the agent of the master of the former, which stipulated the *per diem* compensation for the services, — *Held*, that the District Court had jurisdiction of a libel *in rem* for the salvage services, notwithstanding the written agreement. *The A. D. Patchin*, 1 Blatchf. 414.

13. The admiralty jurisdiction in salvage cases is as essential to the protection of the vessel subject to salvage as it is to the indemnity of the salvor, and can scarcely be ousted by an agreement for rendering the services. *Ib.*

14. Although all the suitors for salvage ought to join in the suit against the property saved, yet the non-joinder of the crew of the salvor vessel in a suit by the master and owner is no objection to the maintenance of the suit in a case where the crew were exposed to no extraordinary hardships or personal danger. (*Per CONKLING, District Judge.*) *Ib.*

15. (March, 1879.) A derrick-boat, raised from the bottom of the channel of a public navigable river, may be the subject of a

libel for salvage in admiralty. *Maltby v. Steam Derrick-boat*, 3 Hughes, 477.

16. (April, 1876.) The 19th admiralty rule was intended to prohibit a joinder of proceedings *in rem* and *in personam* in the same libel for the salvage of the same goods. *Nott v. Steamboat Sabine*, 2 Woods, 211.

17. (May, 1870.) Under the decisions of the Supreme Court, the admiralty jurisdiction of the District Courts over all the navigable waters of the country must be considered as established. *Seven Coal Barges*, 2 Biss. 297.

18. Salvage being a branch of admiralty jurisdiction, the District Court has the same jurisdiction over a case of salvage on the Ohio River as on the Hudson. *Ib.*

19. Barges adrift on the Ohio River are proper subjects of salvage. *Ib.*

20. (Feb., 1839.) A court of admiralty has jurisdiction in cases of salvage to proceed *in personam* as well as *in rem*. *The Centurion*, 1 Ware, 490.

21. It has jurisdiction to carry into execution the decree of another admiralty court. *Ib.*

22. In a case in which the master and crew of a vessel had saved a wreck stranded on the shore, salvage was awarded by arbitrators. No distribution of it was made by the award, but the whole sum was paid to the master. It was held that one of the crew could maintain a libel in the admiralty for a share of the salvage. *Ib.*

23. (Sept., 1871.) A salvage service is performed when a raft of timber is saved from peril on navigable waters. A claim for such salvage service may be maintained in a court of admiralty, if there is no local custom making the service gratuitous. *Fifty Thousand Feet of Timber*, 2 Lowell, 64.

24. (March, 1873.) If the owners of a vessel which has performed a salvage service, make a settlement with the owners of the property saved, and receive the salvage, the crew may recover from them a due share of the reward by libel in admiralty. *Studley v. Baker*, 2 Lowell, 205.

25. (Dec., 1873.) A contract, whether absolute or contingent, for services in saving property on the sea or in a harbor, does not oust the jurisdiction of this court of a proceeding, *in rem* or *in personam*, brought by the contractor himself. *The Louisa Jane*, 2 Lowell, 295.

26. (Sept., 1827.) Admiralty courts have jurisdiction equally *in personam* and *in rem*. *American Insurance Co. v. Johnson*, 1 Blatchf. & H. Adm. 9.

27. The test of admiralty jurisdiction is whether the transaction is of a maritime character. *Ib.*

28. A party deprived of his property on the high seas in any manner has, as a general principle, his remedy in admiralty. *Ib.*

29. Where money is paid by the owner of property to the purchaser of it under an unauthorized sale to satisfy a claim against it for salvage, if it is paid for the purpose of recovering possession of the property, and with an express reservation of all rights, the owner is not prevented from maintaining an action against the salvor, founded upon the wrongful sale. *Ib.*

30. (April, 1831.) Courts of admiralty in the United States have jurisdiction over claims for salvage upon waters within the ebb and flow of the tide, though within the body of a state. *The Wave*, 1 Blatchf. & H. Adm. 235.

31. (April, 1845.) In this country it is clear that salvage compensation may be obtained in admiralty for services rendered within the ebb and flow of the tide, without regard to location, whether on the high seas or *inter fauces terræ*. *The Brig John Gilpin*, Olc. Adm. 77.

32. The common-law "wreck of the sea," if found within high-water mark on shore, is within the privilege of salvage. *Ib.*

33. (May, 1848.) A court of admiralty will not order a salvage suit to be set aside or to be stayed because there is pending in a court of law an action of replevin for the salvaged property, brought by the owner against the salvor, and in which the validity of the salvor's lien upon the property may be determined. *A Raft of Spars*, Abb. Adm. 291.

34. (July, 1848.) It rests in the discretion of a court of admiralty, whose aid is invoked to the settlement of a controversy between foreigners, to hear and determine it, or to remit the parties to their home forum. *One Hundred and Ninety-four Shaws*, Abb. Adm. 317.

35. There is no authority of weight which imposes on the courts of our own country the necessity of determining controversies between foreigners resident abroad, either in common-law proceedings transitory in their nature, or in maritime suits prosecuted *in rem*. *Ib.*

36. As a general rule, where the only question in a salvage suit is as to the rate of reward, and the salvaged property is within the jurisdiction of the court, a court of admiralty in this country will entertain the suit, notwithstanding that all the parties are foreigners. *Ib.*

37. *It seems* that when, in a salvage suit between foreigners, the answer charges the libellant with wanton misconduct in obtaining possession of the property, and prays the privilege to contest the claim of the libellant before the courts of their common country, the case should be dismissed to the home forum. *Ib.*

38. What considerations will govern a court of admiralty in determining to exercise or decline jurisdiction of a suit between foreigners. *Ib.*

39. (Oct., 1865.) There should be but one libel filed in ordinary salvage cases, and costs paid for but one. *The Schooner Charles Henry and Cargo*, 1 Ben. 8.

40. (1800.) As to the jurisdiction of this court, in cases of salvage on the sea, if it were necessary to determine that point, I should be much disposed to say that it was exclusive. *Brevoort v. The Ship Fair American*, 1 Pet. Adm. 91.

41. (1800.) The right to proceed *in rem* does not exclude the remedy *in personam*. A party may pursue several remedies, but can have only one satisfaction. *Brevoort v. The Ship Fair American*, 1 Pet. Adm. 95.

42. (May, 1830.) Where a portion of a vessel which has been wrecked, and the seamen who formed its crew, are both brought to the United States on board of another vessel, the master of such vessel has a lien on the property for the freight, but not for the passage-money of the seamen. *Brckett et al. v. The Brig Hercules*, Gilp. 184.

43. (Nov., 1853.) This court, as a court of admiralty, cannot be called upon to enforce a specific performance of a written contract relating to salvage, though such a contract may and often does form a fair and equitable criterion in fixing the *quantum* of salvage compensation. *Williams v. The Barge Jenny Lind*, Newb. Adm. 443.

44. (June, 1855.) It is the duty of salvors, in bringing suit for salvage, to make all the co-salvors parties, otherwise the court cannot do full justice to all concerned. *Hessian v. The Steamboat Edward Howard*, Newb. Adm. 522.

45. Where a few of the salvors present themselves in court, conceal from the court the names of others who equally participated in the salvage services, the court is bound to dismiss their libel. *Ib.*

Rule 20. — Petitory and Possessory Suits. Process.

In all petitory and possessory suits between part owners or adverse proprietors, or by the owners of a ship, or the majority thereof, against the master of a ship, for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

1. (Feb., 1794.) The District Courts possess all the powers of courts of admiralty, whether considered as instance or prize courts. *Glass v. Sloop Betsy*, 3 Dall. 6, 16.

2. They have jurisdiction on a libel for restitution of a vessel captured as prize, and owned by neutrals and Americans. *Ib.*

3. (Feb., 1813.) The American owner cannot reclaim, in the courts of this country, his property which has been seized and condemned in a French court under the Milan Decree. *Williams v. Armroyd*, 7 Cranch, 423, 425.

4. (Feb., 1815.) The District Courts of the United States, (being neutral) have jurisdiction to restore to the original Spanish owner (in amity with the United States) his property captured by a French vessel, whose force has been increased in the United States, if the prize be brought *infra præsidia*. *Brig Alerta v. Moran*, 9 Cranch, 359.

5. (Dec., 1855.) The courts of admiralty of the United States have jurisdiction of petitory as well as mere possessory actions. *Ward v. Peck*, 18 How. 267.

6. The cases of *The Tilton* (5 Mason, 465), and *Taylor v. Royal Saxon* (1 Wall. Jr. 322), affirmed. *Ib.*

7. (May, 1830.) The admiralty has jurisdiction over petitory as well as possessory suits, to reinstate owners of ships who have

been wrongfully displaced from their possession. *Schooner Tilton*, 5 Mason, 465.

8. The admiralty has jurisdiction, in case of a wrecked ship, to decree a sale upon application of the master. *Ib.*

9. A sale, by an admiralty court, of a wrecked ship, upon the application of the master and a survey made, is within its jurisdiction, but is not conclusive upon the owner or upon third persons. *Ib.*

10. (Sept., 1855.) The admiralty has jurisdiction over petitory suits. A part owner may sustain such a suit against a merely fraudulent possessor without joining the other part owners; and if they do not appear or object, and the libellant establishes his title, the court will decree the possession to him. *Schooner Friendship*, 2 Curt. C. C. 426.

11. (April, 1835.) If a court of admiralty has cognizance of the principal thing, it has also of the incident, though that incident would not of itself, and if it stood alone, be within the admiralty jurisdiction. Therefore, in the case of a piratical taking, the court may have jurisdiction, although the retaking was upon land. And for the same reason goods taken by pirates and sold upon land may be recovered from the vendee by suit in the admiralty. *Davison v. Seal-skins*, 2 Paine, 324.

12. (Oct., 1853.) The courts of admiralty of the United States have no jurisdiction of a suit where the subject-matter in controversy is simply the title to or right of property in a vessel, and where the suit is brought to recover the possession. *The John Jay*, 3 Blatchf. 67.

13. Nor have those courts any jurisdiction of a suit *in rem* for the foreclosure of a mortgage on a vessel. *Ib.*

14. (April, 1849.) The admiralty jurisdiction of the courts of the United States extends to petitory suits as well as to those merely possessory; that is to say, it may pass upon the disputed title of ships as well as upon the simple right of possession of them. *Taylor v. The Royal Saxon*, 1 Wall. Jr. 311.

15. A sale of a vessel by order of a court of Pennsylvania, under the foreign attachment law of that state, does not divest a lien in admiralty for seamen's wages, which may accordingly be enforced in the latter court. The libel in the admiralty was here filed prior to the order of sale in the state court. *Ib.*

16. (March, 1876.) The admiralty jurisdiction attaches where

there is no other question than that of title to a ship, and no pretense of a maritime contract or a marine tort; and this unquestionably so where the ship is or has been afloat. *Grigg v. Sloop Clarissa Ann*, 2 Hughes, 89.

17. (Nov. 1857.) A court of admiralty has no jurisdiction to try questions of equitable title to vessels, or to enforce the equities between mortgagor and mortgagee of vessels; it can only pass upon the legal title. *The William D. Rice*, 3 Ware, 134.

18. (Jan., 1860.) A court of admiralty has no jurisdiction to decree possession of a vessel to the owners of a majority when a title to such vessel is set up in mortgage. *The Martha Washington*, 3 Ware, 245.

19. (March, 1874.) Where the possession of movable property has been changed against the right of the true owner by a maritime tort, or by the breach of a maritime contract to which the property was subject, the owner may vindicate his title in a court of admiralty by a proceeding *in rem*. *Five Hundred and Twenty-eight Pieces of Mahogany*, 2 Lowell, 323.

20. A party who would be the defendant in ordinary cases may often assume the character of libellant in a court of admiralty, in order to bring his case before the court, if the opposite party is in possession of the *res*, or of a fund in which the libellant has a right to share. *Ib.*

21. (June, 1871.) Owners of a majority interest in a ship gave a mortgage on it to M. to secure advances. The mortgage having become due, M. took possession of the interest mortgaged, and claimed to hold the ship as majority owner. Thereupon S., the master, who was a part owner in the vessel, and T., another part owner, ejected M., and he thereupon filed a possessory libel against them and the vessel to recover possession of the ship. *Held*, that the court had no jurisdiction of the action. *Morgan v. Tapscott*, 5 Ben. 252.

22. (April, 1873.) T. built a yacht called the A., for D., in payment for which he was to receive a sum of money and another yacht belonging to D. He received part of the money, but did not take possession of the other yacht. D. sold the A. to H. by bill of sale, with the knowledge of T., who was present when the A. was delivered to H., and was employed by H. to take care of her. On the next day T. took off her sails, delivered them to a cart which H. had sent for them, and took them to H.'s store, and

there stored them, Afterwards H. paid T. five dollars on account of his care of the yacht. Some time after, on H. coming for the yacht, T. refused to give her up to him, claiming that she was his own. H. thereupon filed a libel of possession against the yacht and T., to recover possession of the yacht. No papers had been taken out at the custom house for the yacht till after the sale to H., when T. took out a license on his own certificate as builder. *Held*, that the admiralty had no jurisdiction of the action. *Hill v. The Yacht Amelia et al.*, 6 Ben. 475.

23. (May, 1876.) A. E. S. being the owner of a sloop which had never been enrolled or registered, sold her to T. Part of the purchase-money was paid, and it was agreed that A. E. S., who had no bill of sale for the sloop should procure one from her former owner, and should then give one to T., who should then give him a mortgage on her for \$200. T. took possession of the sloop and ran her for nearly a year, during which time she was repaired and altered under the direction of T. by A. E. S., who was a ship-builder, materials belonging to T. being put into her. A. E. S. obtained his bill of sale, but never tendered one to T. nor demanded the mortgage. Nearly a year after the sale, A. E. S. forcibly took possession of the sloop while on navigable waters, and thereafter sold her to H., who put A. S. in charge of her as master. T. filed a libel to recover possession. *Held*, that the court had jurisdiction of the action, although T. had no bill of sale; that, if the question were simply one of title, the jurisdiction of the admiralty would still attach. *Thurber v. The Sloop Fannie*, 8 Ben. 429.

24. (Nov., 1856.) Where one has a mere equitable title without having possession under it, — *Held*, that admiralty has no jurisdiction to sustain a libel for possession. *Kynoch v. The Propeller S. C. Ives*, Newb. Adm. 205.

25. Courts of admiralty have no general jurisdiction to administer relief as courts of equity. They cannot entertain a libel for specific performance, to correct a mistake, to give relief against fraud, &c. 3 Mason, 16. *Ib.*

26. The jurisdiction of the District Courts of the United States, under the ninth section of the Judiciary Act of 1789, embraces all cases of a maritime nature, whether they be particularly of admiralty cognizance or not. They are not embarrassed by the restraining acts of Richard II. and Henry IV., but are

governed by the principles of maritime law recognized by maritime nations of continental Europe. *Ib.*

Rule 21. — Execution.

In all cases of a final decree for the payment of money, the libellant shall have a writ of execution, in the nature of a *fiery facias*, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the defendant or stipulators.

1. (Oct., 1816.) In proceedings *in rem* upon a bond for the appraised value, given jointly and severally, if one of the obligors dies, the court will proceed against the survivors, or, at the option of the plaintiffs, against the representative of the deceased also. *Ship Octavia*, 1 Mason, 149.

2. (Feb., 1879.) There is no statute of the United States which authorizes or requires sureties in stipulations or appeal bonds in a suit *in rem*, in admiralty, to appear before the admiralty court, after a final decree in the suit, for examination concerning their property, according to the laws and practice of the courts of the state. *The Blanche Page*, 16 Blatchf. 1.

3. The mode of enforcing a final decree for the payment of money, in a suit *in rem*, in admiralty, is that prescribed by Rule 21, in admiralty, by execution. *Ib.*

4. A court of admiralty of the United States has no power to enforce such a decree against such sureties by the sequestration of their property, according to the practice of courts of equity. *Ib.*

5. Nor can it punish such sureties for contempt for not performing their stipulations, or for failing to comply with the provisions of the decree. *Ib.*

6. (Jan., 1846.) Under the rules of this court, a stipulation for costs includes a consent that execution shall issue against all the estate of the parties, in case the stipulators do not perform their engagements. An order or decree of the court must be first obtained on default of the stipulators. The right to such process is now made positive and certain by a rule of the Supreme Court, so far as concerns goods and chattels, and the arrest of the person, in case the decree is not satisfied. *The Steamboat Delaware*, Olc. Adm. 240.

7. The party is entitled to either alternative of the 21st Rule. Taking out a *fi. fa.* in the first instance without success, does not prevent his resorting to process of *capias ad satisfaciendum*, or to an attachment. He may have relief at his option as to the order of process. *Ib.*

8. *Quære*, whether the arrest of stipulators under a *ca. sa.* or attachment satisfies the decree; also whether, after a *ca. sa.* executed, the claimant may sue out an attachment. *Ib.*

9. (June, 1878.) In an action against property for violation of the internal revenue laws, L. appeared as claimant of the property seized, and gave a stipulation, with O. as surety, in which S. was named as proctor of the claimant. The decree in the District Court being in favor of the United States, L. took the case, by writ of error, to the Circuit Court, and gave his own personal bond on the writ of error, which was approved by the judge in the usual form. The decree was affirmed by the Circuit Court, and a writ of error was taken to the Supreme Court, on which L. again gave his personal bond without surety, by consent of the district attorney; and this bond was also approved by the judge in the usual form. The Supreme Court affirmed that decree, and a final decree was entered, and an order was made that notice be given to the sureties on the first stipulation to perform their stipulation or show cause why execution should not issue against them. Other proctors had, during the progress of the cause, been substituted for S., and this notice was served on such other proctors who had agreed to notify O. of the entry of any decree. They failed to do so, however, and O. had in fact no notice, and an order was made by default that execution issue, and it was issued accordingly. O. thereupon applied to open the default and to be allowed to come in and show cause, and that the execution be set aside, claiming that the taking of the bonds on the appeals without surety, and with the approval of the district attorney, had discharged him, and that L. had given to the plaintiff \$75,000 in government bonds as further security, which bonds it was alleged had been stolen. *Held*, that the default against the surety might be opened if he had shown any meritorious defense, but that the facts put forward by him furnished no defense against his liability on the stipulation. *United States v. A Quantity of Manufactured Tobacco*, 10 Ben. 9.

10. (March, 1879.) Certain goods having been proceeded

against as smuggled, the owner appeared as claimant, and gave stipulation for value in a sum agreed upon between the claimant and the district attorney. Afterward a final decree was entered against the claimant on default. On return of the order to show cause against the stipulators, why execution should not issue against them for the amount of the stipulation, — *Held*, that they were not entitled to a reduction of the amount of the stipulation, on the ground that the claimant, after the giving of the stipulation and before the delivery of the goods to her, had paid the duties, and that the amount of the stipulation was for the estimated foreign value of the goods with the duty added; nor on the ground that while the goods were under seizure, and before the stipulation was given, they were injured by being carelessly handled by persons in the employ of the collector, and by visitors who, by their consent, had access to them, and that the stipulation was given for a larger amount than the true value of the goods at the time it was given. *United States v. Two Trunks containing Wearing-Apparel*, 10 Ben. 374.

11. (May, 1879.) In a suit *in rem* for forfeiture, after return of execution against the stipulators unsatisfied, proceedings supplementary to execution in accordance with the laws of New York are properly taken. *A Quantity of Manufactured Tobacco*, 10 Ben. 447.

12. (Nov., 1879.) A suit was brought by a married woman, as owner of a canal boat, against a steamboat, to recover the value of the canal boat and her cargo, lost by negligence of the steamboat. A decree was made in her favor on March 4, 1871, for \$2,737.66 damages and \$331.91 costs. In May, 1871, an agreement to compromise was made between the proctors, and the stipulators paid \$2,000 in settlement. The owners of the cargo were parties to the settlement, and the husband of the libellant was present and consented to it, and also her proctor who had since died. In March, 1879, a motion for leave to issue execution against the stipulators was made on behalf of the libellant, on her affidavit that she did not authorize the settlement and received no part of the \$2,000. *Held*, that the facts as to the settlement created so strong a presumption of acquiescence on the part of the libellant that it was not overcome by her affidavit, and that in any event she could only enforce the decree for the amount of her interest in it, and as she had not shown

what that was, her motion must be denied. *The Steamboat Deer*, 10 Ben. 628.

Rule 22. — Information, Libel, &c., upon Seizures.

All informations and libels of information upon seizures for any breach of the revenue, or navigation, or other laws of the United States, shall state the place of seizure, whether it be on land or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought, and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause, at the return-day of the process, why the forfeiture should not be decreed.

1. (Feb., 1813.) In a count in a libel upon the 50th section of the Collection Law of March 2, 1799, for unlading goods without a permit, it is not necessary to state the time and place of importation, nor the vessel in which it was made; but it is sufficient to allege that they were unknown to the attorney. *Locke v. United States*, 7 Cranch, 339.

2. (Feb., 1813.) An information in the admiralty, for a forfeiture, must contain a substantial statement of the offense. A general reference to the provisions of the statute is not sufficient. If the information be defective in that respect, the defect is not cured by evidence of the facts omitted to be averred in the information. *Schooner Hoppet v. United States*, 7 Cranch, 390.

3. The decree must be *secundum allegata*, as well as *secundum probata*. *Id.*

4. (Feb., 1813.) A libel for a forfeiture must be particular and certain in all the material circumstances which constitute the offense. *Brig Caroline v. United States*, 7 Cranch, 496.

5. (Feb., 1813.) A libel must aver specially all the facts which constitute the offense. *Schooner Anne v. United States*, 7 Cranch, 570.

6. (Feb., 1816.) Prosecutions under the non-importation laws are causes of admiralty and maritime jurisdiction, and the

proceeding may be by libel in the admiralty. *The Samuel*, 1 Wheat. 9.

7. Technical nicety is not required in such proceedings; it is sufficient if the offense be described in the words of the law, and so set forth that if the allegation be true the case must be within the statute. *Ib.*

8. (Feb., 1823.) A libel of information under the ninth section of the Slave Trade Act of March 2, 1807, c. 77, alleging that the vessel sailed from the ports of New York and Perth Amboy, without the captain's having delivered the manifests required by law to the Collector or Surveyor of New York and Perth Amboy, is defective; the act requiring the manifest to be delivered to the collector or surveyor of a single port. *The Mary Ann*, 8 Wheat. 380.

9. Under the same section the libel must charge the vessel to be of the burthen of forty tons or more. In general it is sufficient to charge the offense in the words directing the forfeiture; but if the words are general, embracing a whole class of individual subjects, but must necessarily be so construed as to embrace only a subdivision of that class, the allegation must conform to the legislative sense and meaning. *Ib.*

10. (Feb., 1823.) A libel charging the seizure to have been made on water, when in fact it was made on land, will not support a verdict, and judgment or sentence thereon; but must be amended or dismissed. The two jurisdictions and the proceedings under them are to be kept entirely distinct. *The Sarah*, 8 Wheat. 391.

11. (Feb., 1824.) A libel of information does not require all the technical precision of an indictment at common law. If the allegations describe the offense it is all that is necessary, and if founded upon a statute it is sufficient if it pursues the words of the law. *The Emily*, 9 Wheat. 381.

12. An information under the Slave Trade Act of 1794, c. 187 [XI.], sec. 1, which describes in one count the two distinct acts of preparing a vessel and of causing her to sail, pursuing the words of the law, is sufficient. *Ib.*

13. Stating a charge in the alternative is good, if each alternative constitutes an offense for which the thing is forfeited. *Ib.*

14. (Feb., 1824.) The technical niceties of the common law are not regarded in admiralty proceedings. It is sufficient if an

information set forth the offense so as clearly to bring it within the statute upon which the information is founded. It is not necessary that it should conclude *contra formam statuti*. *The Merino*, 9 Wheat. 391.

15. (Feb., 1824.) In a libel of information under the sixty-seventh section of the Collection Act of 1796, c. 128, against goods, on account of their differing in description from the contents of the entry, it is not necessary that it should allege an intention to defraud the revenue. *Two Hundred Chests of Tea*, 9 Wheat. 430.

16. (Jan., 1827.) In this court it has been repeatedly held that, in libels *in rem*, less certainty than what belongs to proceedings at the common law will sustain a decree of condemnation if the words of the statute are pursued, and the allegations point out the facts so as to give reasonable notice to the party to enable him to shape his defense. . . . In general, it may be said that it is sufficient, in libels *in rem* for forfeitures, to allege the offense in the terms of the statute creating the forfeitures. There may be exceptions to this rule, where the terms of the statute are so general as naturally to call for more distinct specifications. *The Palmyra*, 12 Wheat. 13.

17. (Jan., 1846.) The information contains several counts founded on the following acts, namely, the sixty-sixth section of the act of 1799, the fourth section of the act of 1830, and the fourteenth section of the act of 1832; the defectiveness of the counts upon the acts of 1830 and 1832 would be no ground for reversing a judgment of condemnation, provided the count is good which is founded upon the act of 1799, because one good count is sufficient to uphold a general verdict and judgment. *Clifton v. United States*, 4 How. 242.

18. (Jan., 1846.) In order to sustain counts in the information, founded on the acts of 1830 and 1832, it is not necessary that they should contain averments of the special circumstances of the examination of the goods and detection of the fraud under the authority of the collector. The language of the court in *Wood's Case* re-examined, explained, and controlled. *Buckley v. United States*, 4 How. 251.

19. (Dec., 1856.) Where a libel of information, praying the condemnation of a vessel for violating the passenger law of the United States, states the offense in the words of the statute, it is sufficient. *United States v. Brig Neurea*, 19 How. 92.

20. (Oct., 1873.) An information *in rem*, under the fifth, sixth, and seventh sections of the Confiscation Act of July 17, 1862, for the confiscation of the real estate of a person falling within the provisions of those sections,—such information not being in any sense a criminal proceeding,—is not, after default made and entered, and after a final judgment of condemnation, to be held fatally defective because it has averred that the property seized belonged to some one who was one or another of the persons referred to in the fifth and sixth sections of the act (thus making its allegations in the affirmative), and has not averred it otherwise. *The Confiscation Cases*, 20 Wall. 92.

21. When an information avers that, on a day named, a seizure was made by the marshal under written authority given him by the district attorney in compliance with instructions issued to him by the Attorney-General of the United States, by virtue of the act of Congress of July 17, 1862 (the Confiscation Act above mentioned), and when, to a citation or monition founded on the information, default has been made, it will, after such final judgment and condemnation, be presumed that the requirements of the statute (which direct apparently that a seizure be made prior to filing the information, and that this seizure be by order of the President of the United States), have been complied with. *Ib.*

22. When an information under the said act, filed in the District Court, is really in common-law form, and the proceeding has the substance and all the requisites of a common-law proceeding, the fact that the information is entitled a “*libel*” of information, and that the warrant and citation is called a “monition,” does not convert it into a proceeding on the admiralty side of the court. *Ib.*

23. Where, on an information under the said act, the information alleging that the property belongs to A., and that it is liable to forfeiture under the act,—all allegations being in form,—the court has proceeded as the act directs it to do after default to hear and determine the case, and only after such hearing and consideration condemns the property, it must be presumed that the property belonged to a person engaged in the rebellion, or one who had given aid and comfort thereto. *Ib.*

24. (May, 1818.) A libel for a statute forfeiture should sub-

stantially agree with the terms of the statute, otherwise it is bad. *Schooner Betsy*, 1 Mason, 354.

25. In a libel on the fiftieth section of the Revenue Act of March 2, 1799, ch. 128, it is not necessary to allege the goods to be of foreign growth or manufacture. *Ib.*

26. (Sept., 1857.) A libel of information against a vessel, to procure her forfeiture for a violation of the revenue laws, must aver that she has been seized for the offense, and that the seizure still subsists. *The Washington*, 4 Blatchf. 101.

27. The seizure is a jurisdictional fact, and the absence from the libel of any averment of such seizure is a defect of which advantage may be taken at any stage of the cause. *Ib.*

28. Libel dismissed for want of such averment. *Ib.*

29. (May, 1818.) A libel against a vessel for violating the embargo laws must contain a substantial statement of the offense, and it must be made with reasonable precision. But, inasmuch as the Embargo Act of December, 1807, prohibits *all vessels*, whether foreign or domestic, registered, or coasting vessels, from sailing to any foreign port or place, and the supplemental act of January, 1808, annexes the penalty of forfeiture to *any* vessel which violates either act, it is not necessary that the libel should set forth the particular character of the vessel. *United States v. Schooner Little Charles*, 1 Brock. 347.

30. The exception in the act exempting foreign vessels from its penalties in certain cases need not be noticed. The libel is good, though it does not charge that the vessel libeled was not embraced within the exception. *Ib.*

31. (April, 1872.) A libel of information, filed for the confiscation of property as enemies' property, which charges the acts of the owner of the property in the alternative, thus: "did act as an officer of the army or navy of the rebels in arms against the government of the United States, or as a member of Congress, or as a cabinet officer of the so-called Confederate States," &c., is bad for ambiguity and uncertainty, and in fact contains no charge at all, and a decree of confiscation rendered thereon by default will be reversed. *The Confiscation Cases*, 1 Woods, 222.

32. (April, 1869.) In an information under sec. sixty-six of the act of Congress of 1799, alleging fraud in the importation of merchandise at an undervaluation, it is necessary to aver that the valuation was under cost at the place of exportation. *United States v. Seventy-eight Cases of Books*, 2 Bond, 271.

33. The information in this case, not containing this averment, is defective, but the district attorney is permitted to amend. *Ib.*

34. In the additional or amended information based on sec. 1 of the act of Congress of March 3, 1863, it is not necessary to allege that the person making the fraudulent entry was either owner, consignee, or agent of the property, if it appears from the statements of the information that the person making the entry was the owner, or acted as an agent of the owner. *Ib.*

35. An averment that the requirements of the statute have been complied with, which are merely directory to the officers of the revenue and the importer, is not necessary under the act of March, 1863. *Ib.*

36. The acts of 1799 and 1863 extend and apply to commercial intercourse between Canada and the United States as well as to other foreign countries. *Ib.*

37. Sec. 66 of the act of 1799 is not repealed by sec. 1 of the act of March, 1863, the latter being in aid of or auxiliary to the act of 1799. *Ib.*

38. (Oct., 1870.) If an information sets forth a proper cause of forfeiture within the main part of a statute, the fact that it does not allege that the case is not within the proviso under which there was an exemption from forfeiture, does not prevent the operation of the statute. *The Mary Merritt*, 2 Biss. 381.

39. If the claimant relies upon the exemption under the proviso, he must allege it. That is matter of defense to be set up by him. *Ib.*

40. (May, 1868.) A proceeding *in rem* is the proper mode of prosecution for the violation of the eighth section of the act of July 4, 1864, charging a neglect to post up, in conspicuous places in a steamer, synopses of the laws relating to the carriage of passengers, as required by that section. *The Lewellen*, 4 Biss. 156.

41. In proceedings *in rem* against vessels for penalties and forfeitures, under acts of Congress, it is a general rule, that a seizure of the vessel must precede the filing of the libel, in order to give jurisdiction to the court; and that consequently such precedent seizure must be averred in the libel. But if, under the act of Congress, the owners execute delivery bonds, they thereby waive the objection of the want of a prior seizure. *Ib.*

42. (Oct., 1873.) A libel of information against a steam-vessel, to recover the penalty for not being inspected according to

the act of Congress to provide for the better security of life on board of vessels propelled in whole or in part by steam, cannot be sustained if a subsisting seizure of the vessel at the time the libel is brought is not alleged, and which is to be proven at the hearing. *The Tug May*, 5 Biss. 449.

43. (Oct., 1873.) A seizure must be alleged, in order to give the court jurisdiction. *The Tug Oconto*, 5 Biss. 460.

44. (March, 1866.) In a suit for forfeiture of a vessel, under sec. 50 of the Collection Act (1 Stat. 665), it is not necessary to allege or prove that the goods unladen were of foreign growth or manufacture, but simply that they were brought in such vessel from a foreign port or place. *The Active*, Deady, 165.

45. An allegation, in a libel, that goods were unladen from a vessel within the collection district of Oregon, is equivalent to an allegation that they were unladen within the United States, —it being judicially known that such district is a part of the territory and within the limits of the United States. *Ib.*

46. In such suit, an allegation that the goods unladen were worth \$5,000, without saying at what place, port, or district, is not sufficient; but it is not necessary to allege that the unloading was at a port; any place or district within the United States is sufficient. *Ib.*

47. (May, 1870.) There must be an actual seizure before any judicial proceedings are instituted to condemn a vessel for violation of the navigation laws of the United States. *Steamship Fideliter v. United States*, 1 Sawyer, 153.

48. A seizure is a jurisdictional fact, and must be alleged in a libel to condemn a vessel for violation of the navigation laws of the United States. *Ib.*

49. If a seizure is not alleged in the libel, the objection may be taken for the first time in the appellate court. *Ib.*

50. (June, 1856.) In an information *in rem* for a forfeiture alleged to be incurred under the Collection Act of 1799, c. 22, s. 66, it is essential to charge that the goods were entered under a false invoice, and that they were falsely invoiced with the design to evade the duties thereupon, or some part thereof. *United States v. Three Parcels of Embroidery*, 3 Ware, 75.

51. Therefore, where such an information only alleged that the entry was made below the actual cost, with the design, &c., and the court instructed the jury that the invoice must be falsely

made, and with the design to evade the duties, and the jury found for the plaintiffs, it was held that judgment must be arrested. *Ib.*

52. *It seems* that such an information should be brought in the name of the United States alone, without making the seizing officers parties. *Ib.*

53. (March, 1854.) A libel *in rem* for a forfeiture must allege that the property had been seized by the collector. *Schooner Silver Spring*, 1 Sprague, 551.

54. (May, 1849.) An allegation, in an information against a vessel and cargo, that the master neither did nor would deliver a true manifest of the merchandise, but on the contrary delivered a false and fraudulent invoice of the merchandise, with a view to evade the revenue laws and defraud the United States, does not present a case within the act of Congress of 1821. *United States v. The Margaret Yates*, 22 Vt. 663.

55. Such an allegation presents a case within the sixty-seventh and one hundred and sixth sections of the act of Congress of 1799; and when the offense proved under such allegation consists in the omission to insert in the manifest a part of the merchandise, and it appears that this proceeded altogether from mistake and was wholly unintentional, the alleged fraudulent intent is disproved and a sufficient defense established. *Ib.*

56. (Nov., 1869.) Under the twenty-fourth section of the act of March 2, 1799 (1 Stat. 646), which enacts that if goods imported in a vessel of the United States are not entered on the ship's manifest, the master shall forfeit and pay a sum equal to their value, and the eighth section of the act of July 18, 1866 (14 Stat. 180), which provides that where a vessel or her owner or master is subject to a penalty for a violation of the revenue laws, "such vessel shall be holden for the payment of such penalty, and may be proceeded against summarily by libel, to recover such penalty in any District Court of the United States having jurisdiction of the offense," it is not necessary, in a libel filed against a vessel to recover such a penalty, to aver any prior seizure of the ship. *The Steamer Missouri*, 3 Ben. 508.

57. (June, 1870.) Where a joint information was filed against a steamship and her master, charging that certain merchandise not included in the manifest on board had been imported by her into the United States, contrary to sec. 24 of the act of March 2, 1799, which for such offense imposes upon the master a for-

feiture equal to the value of the goods not included in the manifest, and by sec. 8 of the act of July 18, 1866, the vessel is holden for the payment of the penalty against the master, and becomes liable to be seized and proceeded against by libel to recover the same, — *Held*, that the right to recover against the vessel in the present form of proceeding was clear, and as the answer of the master excepted to the information on the ground that the suit could not be maintained against the vessel and the master jointly, and because they were entitled to different modes of trial, and the answer of the vessel did not except to such joinder, the information would be dismissed as to the master, and a decree entered against the vessel. *United States v. Steamship Queen and her Master*, 4 Ben. 237.

58. (Jan., 1871.) Where, in accordance with the practice in this district in forfeiture cases, an information had been filed containing numerous counts, and the district attorney had, before the trial, filed a specification of the counts on which he intended to rely, but, on the trial, evidence was offered which it was claimed established an offense not embraced in the specification, — *Held*, that the omission to include it in the specification was fatal. *United States v. Four Thousand Eight Hundred Gallons of Spirits*, 4 Ben. 471.

59. (Feb., 1871.) Under Rules 22 and 23 of the Supreme Court in admiralty, and Rules 179 and 184 of this court, a libel of information to obtain the forfeiture of property for alleged violations of the internal revenue laws, must state in distinct allegations the matters relied on as grounds of forfeiture. *Eighteen Thousand Gallons of Distilled Spirits*, 5 Ben. 4.

60. If it does not, the remedy of the claimant is by motion to make the pleading more definite. *Ib.*

61. The government will not be compelled to elect which of the several allegations in a libel of information will be relied on to sustain the forfeiture prayed for. *Ib.*

62. (Oct., 1875.) A libel was filed on behalf of the United States against a steam-tug, to recover a penalty of \$500, under sec. 4499 of the Revised Statutes of the United States. It averred that the vessel, on a certain day, received and carried passengers in the harbor of New York; that no application in writing for an inspection of the vessel had previously been made by her master or owner, as required by sec. 4417 of the Revised Statutes, and

that no such inspection had been had. The owners of the tug excepted to the libel for insufficiency, claiming that sec. 4417 of the Revised Statutes did not require the master or owner of a vessel to make such application, and that the section applied only to such vessels as were engaged in the business of carrying passengers for hire. *Held*, that under the section in question it is the duty of the master or owner of a vessel engaged in carrying passengers to make such written application for her inspection; that the section applied not only to vessels whose regular business it was to carry passengers, but to any vessel which at the time was carrying passengers for hire; that the libel was sufficient. *The Steamboat Jacob G. Neafie*, 8 Ben. 251.

63. (Nov., 1856.) Admiralty Rule 22, prescribing the mode of procedure in petitory and possessory suits, requires a joint proceeding *in rem* and *in personam*. *Kynoch v. The Propeller S. C. Ives*, Newb. Adm. 206.

64. To allow a libel in such a case to be amended so as to proceed for damages *in personam* would be inconsistent with the established rules of admiralty practice. *Ib.*

Rule 23. — Libels in Instance Causes.

All libels in instance causes, civil or maritime, shall state the nature of the cause; as, for example, that it is a cause, civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and if the libel be *in rem*, that the property is within the district; and, if *in personam*, the names and occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of fact upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights, *in rem* or *in personam* (as the case may require), and for such relief and redress as the court is competent to give in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof.

1. (Feb., 1808.) If the libel aver the vessel to be of more than ten tons burden, and to have arrived at a certain port from

the West Indies, and that she was seized in such port, the court will consider it as sufficiently averred that such a seizure was made upon waters navigable from the sea by vessels of ten or more tons burden. *United States v. Schooner Betsey*, 4 Cranch, 447, 520.

2. (Feb., 1813.) In a libel it is not necessary to state any fact which constitutes the defense of the claimant. *Cargo of Brig Aurora v. United States*, 7 Cranch, 383.

3. (Jan., 1837.) It is very irregular, and against the known principles of courts of admiralty, to allow in a libel *in rem*, and *quasi* for possession, the introduction of any other matters of an entirely different character, such as an account of the vessel's earnings, or the claim of the part-owner for his wages and advances as master. *Steamboat Orleans v. Phœbus*, 11 Pet. 175.

4. (Dec., 1851.) In admiralty, the party entitled to relief should always be made libellant; and the practice of instituting a suit in the name of one person for the benefit of another, to whom the right has been transferred, only obtains in particular cases. But all persons entitled on the same state of facts to participate in the same relief may join as libellants, whether the suit be *in personam* or *in rem*. *Fretz v. Bull*, 12 How. 466.

5. Hence, where the cargo of a boat was partly insured, but not the boat itself, and the insurance company paid for that part of the cargo which was insured, it was competent for the owners of the boat to file a libel for the use of the insurance company. *Id.*

6. (Dec., 1869.) It is not fatal to the libellant's case that he has not stated quite correctly the place of the collision, unless the question of exact place is material to the question of who was in fault. *The Suffolk County*, 9 Wall. 651.

7. (Dec., 1869.) The fact that, in a libel for collision, a contract of towage is recited in the libel, does not necessarily convert the libel into a proceeding on the contract. Where the real grievance alleged is a wrong suffered by the libellant in the destruction of his boat, by the carelessness and mismanagement of the boat libeled, the reference to the contract is to be regarded as made by way of inducement to the real grievance. *The Quickstep*, 9 Wall. 665.

8. (Dec., 1869.) A libel for salvage may be filed in the name of the master and owners of the salving vessel, although the

master may make no claim in his own behalf, but, contrariwise, may disclaim. *The Blackwall*, 10 Wall. 1.

9. (Oct., 1827.) In a libel for wages, the allegations of the hiring, voyage, &c. should be drawn accurately and with reasonable certainty; otherwise it may be excepted to. The most correct course is to state the facts, &c., in distinct articles, which is the usual course in admiralty proceedings. *Orne v. Townsend*, 4 Mason, 541.

10. (May, 1833.) In a libel for salvage, all the parties should be inserted and brought before the court. *Schooner Boston*, 1 Sumn. 328.

11. Libels in admiralty, especially those for salvage, are usually too loosely framed. They should state the subject-matter in articles with certainty and precision, and with averments admitting of distinct answers. *Ib.*

12. In a libel *in rem* against a vessel or cargo for salvage, the underwriters, not having accepted an abandonment, are not proper parties. *Ib.*

13. (May, 1833.) In admiralty causes of damage the libel should state each distinct act of injury in a distinct article, with reasonable certainty of time and place. *Treadwell v. Joseph*, 1 Sumn. 390.

14. (Oct., 1834.) Every libel for a tort must contain on its face sufficient averments as to place, to show that it is within the admiralty jurisdiction; otherwise it must be dismissed. *Thomas v. Lane*, 2 Sumn. 1.

15. Separate and distinct trespasses cannot be joined in the same libel against defendants who are not jointly liable. *Ib.*

16. (May, 1844.) The libellant is not bound to swear to the libel. *Coffin v. Jenkins*, 3 Story, 109.

17. (Oct., 1846.) A libel is informal if it proceed against both the vessel and the owners. *Dean v. Bates*, 2 Woodb. & M. 87.

18. (May, 1855.) There is no technical rule of variance in the admiralty; and in describing the particular circumstances attending a collision, an omission to state some facts which prove to be material, which cannot have occasioned any surprise to the opposite party, can have no effect, except to raise suspicions in the mind of the judge as to the existence of those facts. *The Clement*, 2 Curt. C. C. 363.

19. (May, 1859.) The mere fact that a libellant alleges his

claim to be "in a cause of contract civil and maritime, and for extra services rendered" to the vessel libeled and her crew, will not prevent such claim from being regarded as one for salvage, if it appears, from the general scope of the several allegations of which the libel is composed, that such is in reality the character of the claim. *Adams v. Bark Island City*, 1 Cliff. 210.

20. (Sept., 1856.) It is every day's practice, in the admiralty, to allow suits to be brought in the name of the assignee of a *chose in action*. *Cobb v. Howard*, 3 Blatchf. 524.

21. The transferee of a passage ticket can bring an action *in personam*, in his own name, in the admiralty, for a breach of the contract contained in the ticket. *Ib.*

22. (April, 1851.) The entry of a suit to the use of another has, in modern practice, been recognized in the Maryland courts of common law, as evidence of title in the party for whose use it is brought; but it is not according to the established proceedings in courts of admiralty. *Reppert v. Robinson*, Taney's Dec. 493.

23. (April, 1855.) In a question of collision between a tow on the one side, and a steamtug and a steamboat on the other, where it is difficult for the owner of the tug to ascertain who has been in fault, the owner of the tow may "implicate both vessels, demanding a decree against one or both, and thus compel them to interplead and settle the question of their respective liabilities;" and he need not run the risk of losing his suit first against the tug, because her owner can show that the steamer was in fault, and then against the steamer, because her owners can show, upon new evidence in their power, that the tug was in fault. *The Enterprise & The Napoleon*, 3 Wall. Jr. 58.

24. (June, 1876.) The petition or libel should aver the amounts and dates of the policies, the names of the parties insured, and the extent and character of their interests in the vessel. It should also appear that the policy was a marine policy, or at least that it covered the vessel during the season of navigation. *The Dolphin*, 1 Flipp. 580.

25. (Sept., 1866.) A libel may be brought either in the name of the shipper or of an insurance company which has paid the loss or accepted an abandonment. *The Keokuk*, 1 Biss. 522.

26. (July, 1868.) There is no rule in admiralty, in the District Court for Indiana, requiring that libels *in rem* in civil causes shall be supported by the affidavit of the libellant. *The J. R. Hoyle*, 4 Biss. 234.

27. Libels in civil actions *in rem* need not state the occupation and residence of the libellant. *Ib.*

28. (July, 1861.) In a suit *in rem*, it is not necessary to charge the defendant as a common carrier, but the rule is otherwise where the suit is *in personam*; but in the former case, it must appear from the evidence that the ship was employed in the business of a common carrier. *The Pacific*, Deady, 18.

29. (June, 1870.) A libel for collision must state the facts constituting the fault in navigation on the ground of which damages are claimed against the vessel libeled. A mere general allegation that "she was so carelessly, negligently, unskillfully, and recklessly navigated that," &c., is not sufficient. *The H. P. Baldwin*, 2 Abb. U. S. 257.

30. (Feb., 1825.) If a seaman brings a libel against the master for a tortious discharge, and the master has detained his clothing, the value of it may be recovered in the same libel. *Hutchinson v. Coombs*, 1 Ware, 58.

31. (Feb., 1833.) A libellant may unite in one libel an allegation founded on the hypothecation implied by the law for money advanced for repairs, with an allegation on a bottomry bond given for the same consideration. *The Brig Hunter*, 1 Ware, 251.

32. (June, 1837.) In the admiralty, the libellant is required to verify the debt or cause of action on which a libel is founded, by his oath. *Hutson v. Jordan*, 1 Ware, 393.

33. In like manner the respondent is required to verify his answer by oath. *Ib.*

34. (Oct., 1837.) The oath of calumny anciently required of the libellant in the admiralty is not now in use. All that is required by the modern practice is a general verification of the cause of action by affidavit. *Pratt v. Thomas*, 1 Ware, 437.

35. It is not necessary to annex to a libel for wages an account stating the rate of wages and the precise balance due. It is sufficient if the contract is stated and the service alleged in proper form. *Ib.*

36. If the libellant sets forth a particular balance as due, and it appears by the proofs that a larger sum is due, the court is not limited to the precise amount claimed in the libel. *Ib.*

37. Under the prayer for further relief, a larger sum may be decreed if justice requires it. *Ib.*

38. (Sept., 1842.) All the privileged creditors may unite in one libel, or if a libel has been filed by any one separately, then others may come in by petition and make themselves parties to the suit. *The Hull of a New Ship*, 2 Ware, 203.

39. (May, 1843.) In a libel for a marine tort, the libellant must set forth in a distinct allegation each separate and distinct wrong on which he intends to rely, and for which he claims damages. *Pettingill v. Dinsmore*, 2 Ware, 212.

40. If he intends to rely on general ill-treatment and oppression on the part of the master, in aggravation of damages, it must be propounded in a distinct allegation, to enable the master to take issue upon it in his answer. *Ib.*

41. (Oct., 1856.) When several persons have causes of action of a like nature, and involving one or more questions common to all against a vessel, all may join in one libel. *Salmon Falls Mfg. Co. et al. v. The Bark Tangier*, 3 Ware, 110.

42. In such case of joinder, the evidence touching the questions common to all is taken but once, and when these questions are decided, the cases become separate and independent, and each is litigated on its own merits. *Ib.*

43. (Sept., 1858.) An action for a joint tort against two or more cannot, in the admiralty, be united with a tort against one separately, if the objection be taken. *Roberts v. Skolfield*, 3 Ware, 184.

44. (March, 1860.) A claim for the bounty allowed to persons employed in the cod-fishery may be united with a claim for an account of the fish taken during the voyages. *The Lucy Ann*, 3 Ware, 253.

45. (Dec., 1848.) A claim for personal damages cannot be included in the same libel with a claim for the fine recoverable under Stat. 1840, chap. 48. *Knowlton v. Boss*, 1 Sprague, 163.

46. (Jan., 1856.) Where two vessels are under a contract of mate-ship, there is no such joint property in a whale taken by one of them, as requires the owners of both to join in an action for its tortious conversion. *Taber v. Jenny*, 1 Sprague, 315.

47. (Jan., 1861.) An assignee of a *chose in action* may sue in his own name in the admiralty. *Swett v. Black*, 1 Sprague, 574.

48. And this is so, if the assignment be only of a part of the entire right; or, at least, the respondents cannot object on that

ground, if the whole right be represented by the libellants. *Ib.*

49. (July, 1871.) In the admiralty practice of this country, there is no rigid rule that a libellant in a collision cause, alleging one fault on the part of the defendant vessel, cannot recover on proof of a different fault. *The Cambridge*, 2 Lowell, 21.

50. Some cases on this point examined. *Ib.*

51. Where the libel alleged only that the defendant steamer ported when she should have starboarded, and the evidence for the steamer proved that she was running at too great speed in a fog, and had no look-out forward, — *Held*, that the libellant could rely on these faults as well as on those which he had alleged. *Ib.*

52. (Sept., 1872.) A usage in the coasting trade to carry a part of the cargo, if heavy and imperishable, on deck, is reasonable. Such a usage found in this case. If such a deck-load be jettisoned, the ship and freight are liable to contribute for the loss in general average. This contribution may be recovered by a libel against the vessel for a total loss. *The William Gillum*, 2 Lowell, 154.

53. (March, 1877.) The lien of material-men is assignable; and the assignee should proceed in the admiralty in his own name, if the assignment is absolute. *The Sarah J. Weed*, 2 Lowell, 555.

54. (Sept., 1827.) Parties whose interests rest upon a cause of action common to all may unite in the same libel in admiralty, though as between themselves their interests are separate and distinct. *American Insurance Co. v. Johnson*, 1 Blatchf. & H. Adm. 9.

55. A libel *in personam* resting upon a common cause of action may be filed for the libellants and for all others interested, whenever the whole subject-matter can be disposed of in one suit. *Ib.*

56. (March, 1832.) Parties may join in one libel causes of action arising *ex contractu* and those arising *ex delicto*, where the causes of action are so united that the same evidence will apply to all — for example, in a suit *in personam*, a claim for wages, and a claim for damages for an assault and battery committed on the same voyage. *Borden v. Hiern*, 1 Blatchf. & H. Adm. 293.

57. *Seem*, that parties may join in a suit *in personam* causes of action arising *ex delicto* against two respondents, with those

arising *ex contractu* against one of them, where the same evidence will apply to all—for example, a claim against a master and a mate, for damages for an assault and battery, and a claim against the master for wages earned on the same voyage. *Ib.*

58. Joinder of causes of action in admiralty considered. *Ib.*

59. (Feb., 1836.) Where a supplemental libel is filed before the process is returnable, it becomes part of the pleadings, without further notice to the respondent, and he is bound to answer it. *Thomas v. Gray*, 1 Blatchf. & H. Adm. 493.

60. (Feb., 1844.) An averment in a libel by a seaman for wages, who has signed articles for a voyage from New York to Pernambuco, thence to a port in Europe, and back to the United States, is sufficiently supported, in case the master or owner does not produce the articles on trial, by proof that the agreement was that the first terminus was some port in South America not designated. *Piehl v. Balchen*, Olc. Adm. 24.

61. But an allegation that the voyage was continued from the port in Europe to the Cape de Verd Islands, to Rio Janeiro, to Monte Video, and Buenos Ayres, does not render the after run of the vessel as part of the voyage agreed for in the articles, and, unless assented to by the crew, is a wrongful deviation which discharges their obligation to the vessel. *Ib.*

62. Compensation for short allowance is recovered as seamen's wages; and a general form of pleading is sufficient to admit evidence of the right, if not excepted to before trial. *Ib.*

63. (July, 1845.) The act of Congress of July 20, 1790, in relation to seamen's wages, does not compel all the seamen suing *in personam* for wages earned on the same voyage, to unite in the action. *Collins v. Hathaway*, Olc. Adm. 176.

64. The peremptory provision in the act applies only to cases *in rem*. But the policy of the statute embraces suits *in personam*; and this court encourages joint actions to be prosecuted in cases *in personam* also. *Ib.*

65. (Feb., 1846.) All the crew may unite in a suit for double wages because of a short allowance of bread, and each is a competent witness for his fellows. *The Bark Childe Harold*, Olc. Adm. 275.

66. (April, 1846.) When a party proceeded against is named in the body of the libel, a decree *secundum allegata et probata*

may be rendered against him, although he is not named in the prayer for relief. *Nevitt v. Clarke*, Olc. Adm. 316.

67. (July, 1846.) A seaman, who alleges in his libel for wages that he executed shipping articles for the voyage, cannot claim the right to leave the vessel at his option, and that the agreement is void, under the act of 1840, because the shipping articles are not produced on the trial. *The Brig Osceola*, Olc. Adm. 450.

68. (July, 1847.) Where a libel is filed for a cause of action upon which both vessel and master may be together liable, the court will not make an order that the libellant elect between the remedy *in rem* and that *in personam*, nor that he submit to have either the arrest of the respondent or the attachment against the vessel vacated. *The Zenobia*, Abb. Adm. 48.

69. There is no abstract incompatibility between proceedings *in rem* and proceedings *in personam*, which forbids them to be joined in one action where such joinder is calculated to advance the ends of substantial justice. *Ib.*

70. Where both the vessel and the master or owner are conjointly liable upon a contract of affreightment, the personal remedy and the remedy against the vessel may be sought in one and the same action. *Ib.*

71. (Feb., 1848.) It is inequitable for a seaman, knowing that the papers are ready for an immediate commencement of a suit by his shipmates for the recovery of wages earned on the same voyage, or by a bottomry holder who sues also for a portion of the wages of the voyage previously paid by him, to endeavor to supplant such action, by urging out, in his individual name, process in advance of it, so as to subject the ship or her proceeds to needless expense. Costs will not be allowed the seaman in such a case, nor to others who unite in the proceeding instead of joining in the prior suit in progress. *The Cabot*, Abb. Adm. 150.

72. (Sept., 1850.) The general course of admiralty procedure in this country requires a sworn libel as the foundation of any process of arrest of person or property. *Martin v. Walker*, Abb. Adm. 579.

73. When a libel is verified by an attorney in fact of the libellant, as in case of the libellant's absence, &c., it is not necessary that the authority of the attorney to act should be made to appear when he attests the libel or files it; it is enough if he establishes such authority when it is called in question. *Ib.*

74. A mere general employment as proctor or attorney at law to prosecute a demand in a court of admiralty is not sufficient to authorize the party employed to verify a libel as attorney in fact of the libellant. *Id.*

75. (Oct., 1867.) In a suit brought in behalf of a vessel in tow, to recover the damages sustained by a collision with another vessel, — *Held*, that the fact that the libel did not specify the want of proper lights on the tug as an element in her negligence made no difference, there being no dispute as to what lights the tug had, and no surprise upon her as to the evidence given about her lights; that, if desired, an amendment of the libel to that effect would be allowed. *The Steamer Alabama v. The Steam-tug Gamecock*, 1 Ben. 477.

76. (March, 1872.) A libel was filed against a cargo of coal on board of a canal-boat, and against her master to enforce a lien for seaman's wages, upon freight-money alleged to be due from E. & M. on the cargo. The cargo was seized, and was claimed by the C. S. Company. *Held*, that the freight-money due from the C. S. Company to E. & M. could not be held, because the libellant had not in his libel sought to charge it. *Conley v. Freight of Canal-Boat, &c.*, 6 Ben. 12.

77. (Jan., 1873.) A libel to recover damages for injury to a pier, by overloading it, which states that the pier is within navigable waters from the ocean, and within the ebb and flow of the tide, and does not show that the pier is part of the land, is not liable to exception, as failing to state a case within the jurisdiction of the admiralty. *The Mayor, &c. v. Highland*, 6 Ben. 289.

78. (Feb., 1874.) A libel filed against a vessel to recover for advances to the vessel stated that the vessel had carried freight, and prayed that it might be applied to the libellant's claim, but the libel was not filed against the freight, nor was the freight attached on process. *Held*, that the court could make no adjudication as to the freight. *The Brig Sarah Harris*, 7 Ben. 177.

79. (Dec., 1874.) A libel for freight was filed against the goods and against the consignees to whom the goods had been delivered. An exception was taken to the libel because it joined a cause of action *in rem* with one *in personam*. *Held*, that, as the cause of action arose out of a contract which, if the respondents were liable on it, also bound the property; and as the respondents claimed the property, there was no reason for not joining the

causes of action. *Vaughan v. Six Hundred and Thirty Casks of Sherry Wine*, 7 Ben. 506.

80. (July, 1875.) A libel against a canal-boat alleged that she was engaged in transporting goods on the navigable waters of the port of New York, and was in need of advances to enable her to prosecute her business; and that the libellant, at the request of her master and owner, advanced money to pay necessary towage bills and bills for materials, whereby the boat was enabled to earn freight. The owner excepted to the libel for insufficiency. *Held*, that the libel did not state facts sufficient to entitle the libellant to a lien on the boat. *The Canal-Boat William A. Harris*, 8 Ben. 210.

81. Mere advances of money to the owner of a vessel do not create a lien on her in favor of the lender, in the absence of any agreement for a lien upon the vessel, though the money be applied to the payment of liens upon the vessel. *Ib.*

82. (Dec., 1879.) Although the libel did not allege that the master had made efforts without success to procure advances on the credit of the vessel, yet, as it averred that he, having no other means of procuring the money, borrowed the money on bottomry after duly and publicly advertising therefor, and the libel had not been excepted to, the objection to the libel for not containing that allegation had been waived. *The Bark Edward Albro*, 10 Ben. 669.

83. (May, 1841.) The libel should always show the jurisdiction of the court. *Boon v. The Hornet*, Crabbe, 426.

84. (1856.) Where a libel is filed to enforce a lien upon a domestic vessel, it must be distinctly set forth in the libel by what municipal regulation or state law such lien is conferred. *Parmlee v. The Propeller Charles Mears*, Newb. Adm. 197.

85. Where a libel is filed to enforce a lien under the general maritime law, such facts must be set forth in the libel as, if proven, would satisfy the court that the vessel was a foreign vessel at the time the lien attached. *Ib.*

86. When a libel is filed to enforce a lien against a vessel before she is actually employed in navigation, the libel must show that the vessel is of the size and build fitted for maritime employment, and that her business was to be maritime navigation upon the lakes or high seas. *Ib.*

87. Whatever are deemed material and sufficient averments in

a libel upon the seaboard to give jurisdiction would be considered the same upon the lakes. *Ib.*

88. (June, 1854.) Parties to suits in admiralty must be bound by their allegations and proofs, and the former, to be effectual, must be sustained by the latter. *Kramme v. The Ship New England*, Newb. Adm. 481.

89. When the allegations of the libel are not sustained by proof, the libel will be dismissed. *Ib.*

90. (March, 1855.) The case presented by the pleadings in a cause is the only one to which testimony can be directed, and the only one upon which the court can be called to adjudicate. *Soule v. Rodocanachi*, Newb. Adm. 504.

91. In a case of damage to cargo, where the libel alleges the fault of the master to be, (1) that he falsely represented his vessel to be tight, staunch, and seaworthy, and (2) that the damage resulted from the master's carelessness, negligence, and improper conduct, the libellant cannot claim another specific ground of complaint not set up in the libel, as that the damage was caused by the fault of the master in not putting into some other port to repair his vessel and take measures to preserve his cargo. *Ib.*

92. (June, 1874.) The allegations and proofs must coincide; and the court cannot consider evidence not in accordance with the issues made by the parties. *The Morton*, 1 Brown, 137.

93. (Sept., 1873.) An omission to state in the libel a material fact peculiarly within the knowledge of the opposite party, as that one of the colliding vessels was improperly manned, will not be allowed to work an injury to the libellant, if the court can see that there was no design on his part in omitting to state it. *The Coleman & Foster*, 1 Brown, 456.

94. (Aug., 1873.) A libel which is sufficient under the general maritime law is sufficient in cases arising upon the lakes, and no averment is required to bring it within the Act of 1845. *The Illinois*, 1 Brown, 497.

95. It is unnecessary to aver that the vessel in question is engaged in navigation, or capable of being so employed. *Ib.*

Rule 24.—Amendment of Informations and Libels.

In all informations and libels in causes of admiralty and maritime jurisdiction, amendments in matters of form may be made at any time, on motion to the court, as of course. And new counts may be filed, and amendments in matters of substance may be made, upon motion, at any time before the final decree, upon such terms as the court shall impose. And where any defect of form is set down by the defendant upon special exceptions, and is allowed, the court may, in granting leave to amend, impose terms upon the libellant.

1. (Feb., 1813.) An informal libel or information *in rem* may be amended by leave of the court. *Brig Caroline v. United States*, 7 Cranch, 496.

2. (Feb., 1813.) A libel may be amended after reversal for want of substantial averments. *Schooner Anne v. United States*, 7 Cranch, 570.

3. (Jan., 1841.) An amendment in a case in the admiralty before the Court of Appeals cannot introduce a new subject of controversy, although the most liberal principles prevail in such cases. *Houseman v. Schooner North Carolina*, 15 Pet. 41.

4. (Dec., 1865.) A libel *in rem* against a vessel and personally against her master, may properly, under the present practice of the court, be joined. And if the libellant have originally proceeded against vessel, master, *owners*, and *pilot*, the libel may, with leave of the court, be amended so as to apply to the vessel and master only in the way mentioned. *Newell v. Norton & Ship*, 3 Wall. 257.

5. (May, 1812.) Amendment by inserting a new substantive offense disallowed, the statute of limitations having run against it. *Schooner Harmony*, 1 Gall. 123.

6. (Sept., 1859.) In admiralty the name of any party who has lost his interest in the suit can, on a proper application, be stricken from the record. *The Falcon*, 4 Blatchf. 367.

7. (Oct., 1819.) The court, proceeding under the civil law, will not allow a party to be surprised by evidence materially variant from the case stated in the pleadings, but will allow an amendment; yet, if the statement of the case be not such as can mislead the party, the court will proceed to a decree. *Crawford v. The William Penn*, 3 Wash. 484.

8. (1870.) The District Courts have an undoubted power, in the exercise of a sound judicial discretion, to permit a libel to be amended. *United States v. One Hundred and Twenty-three Casks of Distilled Spirits*, 1 Abb. U. S. 573.

9. If an application to amend a libel proposes to introduce a new cause of action, it is usual to allow the amendment when the new cause of action corresponds in character and is kindred in nature to that presented in the original libel; but if the amendment introduces a new substantive cause of action and a new charge against the defendant, it is disallowed. *Ib.*

10. A libel of information was filed under a section of the statute imposing punishment for disposing of property subject to internal revenue tax in fraud of the revenue laws. The government applied for leave to amend by adding a count founded on another section of the statute, which imposed punishment on a manufacturer, &c., who should neglect to make returns of his manufactures to the proper revenue officer. *Held*, that this was substantially a new charge and that the leave must be refused. *Ib.*

11. (Sept., 1827.) A libel may be amended on motion by striking out unnecessary and impertinent allegations. *American Ins. Co. v. Johnson*, 1 Blatchf. & H. Adm. 9.

12. (April, 1846.) The case of *Reed v. Canfield* (1 Sumn. 202), considered and doubted. When objections are made, at the hearing, to the want of proper form in the pleadings or proceedings, apparent upon their face, the court will permit an amendment to be made therein *instanter*. *Nevitt v. Clarke*, Olc. Adm. 316.

13. The court can also, at discretion, allow amendments to the merits in the pleadings at any stage of the cause prior to a final decree. *Ib.*

14. (Jan., 1848.) After a full hearing and the decision of the court that the action is not sustained by the proofs as the pleadings stand, it is competent for the court to permit parties to amend their pleadings so as to embrace the merits of the case. *Davis v. Leslie*, Abb. Adm. 123.

15. (Feb., 1849.) In answer to a libel for wages, the claimants set up a stipulation in the shipping articles in bar of the recovery. The libellant served a replication¹ in the usual form, but contended, upon the trial, that the stipulation relied upon was void. *Held*:

¹ See Rule 51.

(1.) That, so far as the claim to treat the stipulation as void might rest upon any matters outside the stipulation itself, the question was not raised by the general replication;¹ but the libellant ought, either by an amendment of the libel or by a special replication,² to have introduced into the pleadings averments contesting or avoiding the apparent bar contained in the stipulation.

(2.) That the question whether the stipulation was void in point of law in itself considered, and apart from any extraneous facts might be raised on the general replication,³ and should be considered as if it had arisen upon demurrer or exception to the answer. *The Atlantic*, Abb. Adm. 451.

16. (Feb., 1868.) Where a libel had been dismissed on exception, but leave had been given to amend, and a new libel was filed setting out a valid cause of action, but adding a second cause of action, which was substantially a repetition of the first libel which had been dismissed, — *Held*, that this was an irregular and improper mode of pleading, and the libel must be dismissed, as not within the spirit of the order giving leave to amend. *The Steamship Circassian*, 2 Ben. 171.

17. (Nov., 1870.) A libel against a tug for sinking a barge by towing her on a sunken pier charged that the existence of the sunken pier was known to the tug, and that, instead of avoiding it, the tug towed the barge upon it, but did not aver that it was done negligently, and the answer averred that the accident was not the result of any negligence on the part of the tug, and the case was tried on those pleadings. *Held*, that the libellant might amend the libel by averring negligence, and thus accepting the issue tendered by the claimant, and the issue which was in fact tried. *The Steamboat Deer*, 4 Ben. 352.

18. (Aug., 1878.) The master of a vessel filed a libel against the cargo to recover freight and demurrage claimed under a charter and bill of lading. The consignee of the cargo, who had sold the cargo and had no interest in it, intervened and gave bonds for the cargo when it was seized under the process. The cargo had been delivered to the purchaser without notice of any claim of lien for freight, and after the consignee had signed an agreement to pay \$150 demurrage, and the consignee in his answer admitted that he was liable for the amount of freight due,

¹ See Rule 51.

² *Id.*

³ *Id.*

but disputed the amount claimed by the vessel. The charter provided that freight was to be paid on the cargo, which consisted of lumber and timber, at so much per M., inch board measure. *Held*, that the lien of the vessel on the cargo had been lost. That as the consignee, who was the only party respondent before the court, was the party really liable to pay what was due, the court would turn the proceeding into an action *in personam*, and give a decree against him for the amount of the freight due, according to the charter and the \$150 demurrage which he had agreed to pay, but without interest or costs. *One Hundred and Eighteen Sticks of Timber*, 10 Ben. 86.

19. (June, 1874.) A court of admiralty has no power to permit a libel to be amended by striking out the name of a sole libellant and substituting another in its place. Such amendment is virtually the institution of a new suit, and discharges the sureties upon the stipulation. *The Detroit*, 1 Brown, 141.

20. (Jan., 1874.) It is not competent to amend a joint libel against three vessels, by substituting the name of the owner of one vessel for the vessel, so as to change it from a libel *in rem* to one *in personam*. *The Young America*, 1 Brown, 462.

21. A libel *in rem* cannot be changed into a libel *in personam* against the owner. *Ib.*

Rule 25.—Stipulation for Costs by Defendant.

In all cases of libels *in personam*, the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken, and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties, in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order in the progress of the suit.

Rule 26.—Verification of Claim. Stipulation for Costs.

In suits *in rem*, the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made is the true and *bona fide* owner, and that no other person is the owner thereof. And where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or if the property be, at the time of

the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And, upon putting in such claim, the claimant shall file a stipulation, with sureties, in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon an appeal, by the appellate court.

1. (Jan., 1834.) A libel was filed in the District Court of Maryland, for a salvage service performed by the libellant, the master and owner of the sloop Liberty, and by his crew, in saving certain goods and merchandise on board of the brig Spark, while aground on the bar at Thomas's Point in the Chesapeake Bay. The goods were owned by a number of persons, in several and distinct rights; and a general claim and answer was interposed in behalf of all of them, by Jarvis and Brown (the owners of a part of them); without naming who, in particular, the owners were, or distinguishing their separate proprietary interests. This proceeding was doubtless irregular in both respects. Jarvis and Brown had no authority, merely as co-shippers, to interpose any claim for other shippers with whom they had no privity of interest or consignment; and several claims should have been interposed by the several owners, or by other persons authorized to act for them in the premises; each intervening in his own name for his proprietary interest, and specifying it. If any owner should not appear to claim any particular parcel of the property, the habit of courts of admiralty is to retain such property, or its proceeds, after deducting the salvage, until a claim is made, or a year and a day have elapsed from the time of the institution of the proceedings. And when separate claims are interposed, although the libel is joint against the whole property, each claim is treated as a distinct and independent proceeding, in the nature of a several suit, upon which there may be a several independent hearing, decree, and appeal. This is very familiar in practice in prize causes and seizures *in rem* for forfeitures; and is equally applicable to all other proceedings *in rem* whenever there are distinct and independent claimants. *Stratton v. Jarvis*, 8 Pet. 4.

2. (Nov., 1818.) A claim to a vessel and cargo, filed in an admiralty cause, though sworn to, is not evidence. The law does not allow to the affidavit made to them the dignity of testi-

mony. If it amounts to anything, it is no more than "the exclusion of a conclusion." *The Thomas and Henry*, 1 Brock. 368.

3. (Oct., 1872.) In the absence of the owner, a mortgagee [of the vessel] may be permitted to appear as claimant. *The Selt*, 3 Biss. 344.

4. (Feb., 1872.) The party seeking to defend, in a proceeding *in rem*, in instance causes in courts exercising admiralty jurisdiction, must file a claim to the property libeled. *Steamer Spark v. Lee Choi Chum*, 1 Sawyer, 713.

5. The claim must be filed by the owner, or some authorized agent, and must state the facts in a direct issuable form, and not by way of recitals. Course of proceedings indicated. *Ib.*

6. (April, 1878.) A claimant of a vessel filed a claim in which he averred that he was a mortgagee in possession. The libellant denied his right to appear and claim, and on a reference it was determined that the claimant was a mortgagee in possession. Thereafter he applied for leave to withdraw that claim and file a new one averring that he was the owner of the vessel. The libellant objected. *Held*, that the motion would be granted, no other party having been affected by the proceedings, or suffering prejudice. *The Bark Archer*, 9 Ben. 455.

7. (March, 1860.) The assignment, by the builders of a vessel, of the moneys to become due on the building contract, invests the assignee with no such proprietary interest as will enable him to appear as claimant and defend. *Revenue Cutter No. 1*, 1 Brown, 76.

8. (March, 1874.) The right of a party to appear and defend a suit *in rem* must be put in contestation, if at all, before the hearing, and then only by way of exception if the disability appear upon the face of the claim, or an exceptive allegation putting the right in issue if it does not so appear. *The Prindiville*, 1 Brown, 485.

Rule 27. — Answer on Oath. Form of Answer.

In all libels in causes of civil and maritime jurisdiction, whether *in rem* or *in personam*, the answer of the defendant to the allegations in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner, each interrogatory propounded at the close of the libel.

1. (Feb., 1808.) *Quære*: Whether the answer of the claimant to the libel ought not always to be upon oath, if required; and whether he is not bound to submit to answer interrogatories upon oath, *viva voce*, in open court. *United States v. Schooner Betsey*, 4 Cranch, 443.

2. (Dec., 1863.) This same necessity for specification, though the case was not decided on that ground, the point not having been raised on argument, exists in a high degree in regard to an answer put in, to an admiralty claim, which answer ought to be full, explicit, and distinct; and hence a defense to a libel for collision, which sets forth that the injured vessel "lay in an improper manner, and in an improper place," without showing in any respect wherein the manner or why the place was improper, is insufficient, *it seems*, as being too indefinite. *Commander-in-Chief*, 1 Wall. 43.

3. (Dec., 1869.) The defense that the services for which salvage is claimed were rendered under an agreement for a fixed sum payable in any event, is waived, unless set up in the answer with an averment of payment or tender. *The Camanche*, 8 Wall. 449.

4. (Dec., 1871.) An amended answer setting up an improbable defense, and one quite departing from that set up in the answer, treated unfavorably. *The Mabey and Cooper*, 14 Wall. 205.

5. (Oct., 1881.) Ship-owners may avail themselves of the defense of limited liability by answer or plea as well as by the form of proceeding prescribed by the rules of this court, at least so far as to obtain protection against the libellants or plaintiffs in the suit. Those rules were not intended to restrict them, but to aid them in bringing into concourse those having claims against them arising from the acts of the master or crew. *The Scotland*, 15 Otto, 24.

6. If the owners plead the statute, a decree may be made requiring them to pay into court the limited amount for which they are liable, and distributing said amount *pro rata* amongst the parties claiming damages. Such a proceeding in a court of admiralty would be an "appropriate proceeding" under the statute. *Ib.*

7. It is not necessary that ship-owners should surrender and transfer the ship in order to claim the benefit of the law. That

is only one mode of relief. They may plead their immunity, and, if found in or confessing fault, may abide a decree against them for the value of ship and freight as found by the proofs. *Ib.*

8. (May, 1814.) In causes on the instance side of the admiralty, the answer of the claimant should be verified by oath; and in a suit for wages, the libellant may compel the adverse party to answer special interrogatories. *The Resolution*, 2 Gall. 45.

9. (Oct., 1827.) No facts of misbehavior, or other cause of forfeiture of wages, are admissible at the hearing, unless the answer distinctly propounds them and puts them in issue. *Orne v. Townsend*, 4 Mason, 541.

10. Habitual drunkenness, if it goes to establish general incapacity to perform duty, is a ground of forfeiture of wages; otherwise it goes only to diminish compensation for the voyage. But no fact of this nature is examinable at the hearing, unless averred and put in issue by the owner. *Ib.*

11. Where misconduct is relied on to defeat the claim of wages, it should be stated with reasonable certainty as to time, place, circumstances, and degree. *Ib.*

12. (May, 1833.) The answer should meet each material allegation of the libel, with an admission, a denial, or a defense. *Schooner Boston*, 1 Sumn. 328.

13. (May, 1833.) Where a defense is put in by way of justification, it must admit the facts. *Treadwell v. Joseph*, 1 Sumn. 390.

14. Where the act is relied on as a punishment, it must be so pleaded. *Ib.*

15. (Oct., 1834.) A receipt by a seaman, on receiving the sum due to him for wages, stating that it is in full for all services, and demands for assault, battery, and imprisonment, &c., against the owner and officers, is no bar to a suit for an assault, battery, and imprisonment. And if it were, it could not avail the party, unless specially relied on in the answer as matter of defense. *Thomas v. Lane*, 2 Sumn. 1.

16. (Oct., 1837.) Courts of admiralty do not recognize the rule in equity, requiring two witnesses, or one witness and strong corroborative circumstances, in order to overcome the denial in the answer. *Sherwood v. Hall*, 3 Sumn. 127.

17. (May, 1840.) The answer of the respondent upon oath, in

reply to interrogatories, does not, in the admiralty, constitute positive evidence in his own favor. Its true effect is, either to furnish evidence for the other party, or, in a case doubtful in point of proof, to turn the scale in favor of the respondent. *Cushman v. Ryan*, 1 Story, 92.

18. (May, 1844.) The answer to a libel should be sworn to by the respondent. *Coffin v. Jenkins*, 3 Story, 109.

19. (May, 1846.) The allegations of one of the parties in an answer are not evidence for him unless called for by the other side, and are then to be weighed as they deserve, without requiring, in all cases, more than one witness to overcome them. *Jay v. Almy*, 1 Woodb. & M. 263.

20. (Sept., 1871.) A general allegation of negligence, in a collision case, is, on the part of the libellant's vessel, not sufficient to constitute a valid defense, even in pleading. Specification as to what was done or omitted, and caused the accident, must be made. *Killam v. Schooner Eri*, 3 Cliff. 456.

21. (April, 1851.) If the respondent mean to rely upon the character of the vessel in this respect [that it was not fitted for the navigation of the sea], he must put it in issue by his answer; otherwise no evidence can be received upon the subject. *Reppert v. Robinson*, Taney's Dec. 493.

22. (Dec., 1876.) Libel by insurer who has paid the loss, against carrier whose wrongful act has caused the loss. Respondent is not permitted to set up as a defense that he (the insurer) was not bound in law to indemnify the assured for the loss so occasioned. *Insurance Co. v. Steamboat Iron Mountain*, 1 Flipp. 616.

23. It is proper to bring such libel in the name of the insurer, and not in the name of the assured. This is the admiralty practice. *Ib.*

24. (June, 1857.) An answer which sets up facts constituting negligence is sufficient, though no fault be formally charged. The rules of pleading in admiralty are less technical than at law. *The Pilot*, 1 Biss. 159.

25. (Dec., 1861.) Answer to a libel of information must be full and explicit to each article. It must deny the charges, or confess and avoid them by proper averments of facts. *The Propeller Sun*, 1 Biss. 373.

26. (April, 1837.) When the respondent wishes to avail him-

self of any particular matter of defense, he must present it with proper averments in his answer or by plea. *The William Harris*, 1 Ware, 373.

27. No evidence is properly admissible but what applies to matters in issue between the parties, and nothing is in issue but what is averred on one side and denied by the other. *Ib.*

28. (May, 1843.) When a master is prosecuted in the admiralty for punishing a seaman, he may be permitted, in justification or in mitigation of damages, to show that the seaman was habitually careless, disobedient, or negligent in his conduct. *The Lowther Castle*, 1 Hagg. 385. But in order to be admitted to this defense, he must set forth such habitual misconduct in a defensive allegation in his answer, in order that the libellant may be enabled to meet the charge by counter-evidence. *Pettingill v. Dinsmore*, 2 Ware, 212.

29. (July, 1858.) When a former judgment is relied on as a defense in the admiralty, it should appear by the record that the precise question or title set up was passed upon in a former suit, not merely that it might have been. *The Vincennes*, 3 Ware, 171.

30. (Feb. 1843.) The question whether the sale of a vessel was fraudulent as against creditors cannot be raised by third persons who have no interest in the question. *Schooner Lion*, 1 Sprague, 40.

31. (May, 1859.) Where the owner successfully repudiates a bill of lading, he cannot at the same time set it up as merging a prior contract. *The Bark Edwin*, 1 Sprague, 477.

32. (Oct., 1854.) Where a new clause in the shipping articles is relied upon to repel a claim for wages, it must be pleaded. *Heard v. Rogers*, 1 Sprague, 556.

33. If not pleaded, the court must infer that the articles are in the usual form. *Ib.*

34. (1869.) Where an agreement to refer was made before answer filed, the claimant should have leave to answer without terms after the rule is set aside. An answer was not necessary while the case was before the arbitrators unless ordered by them. *The Nineveh*, 1 Lowell, 400.

35. (Feb., 1833.) Where, in an action against two parties for a joint tort, the respondents put in separate answers, each respondent must rely for his defense upon his own answer and the proofs without reference to the answer of the other respondent;

but unless the answers are excepted to by the libellant for insufficiency or uncertainty, they will be liberally construed. *Gardner v. Bibbins*, 1 Blatchf. & H. Adm. 356.

36. (May, 1833.) An answer averring in general terms that a vessel was supplied with a medicine-chest according to law, is not of itself sufficient evidence to discharge a master from his liability for a physician's bill for attendance upon a sick seaman. *Freeman v. Baker*, 1 Blatchf. & H. Adm. 372.

37. (Feb., 1836.) When the respondent has been arrested in a suit *in personam*, the answer is not filed, within the meaning of the 18th Rule, until bail is perfected. *Thomas v. Gray*, 1 Blatchf. & H. Adm. 493.

38. (April, 1845.) Where an answer is made without oath, as authorized by Rule 87, it should still respond fully and particularly to every material averment of the libel. *The Brig Aldebaran*, Olc. Adm. 130.

39. Mere narrative statements in a libel, which allege no damages and claim no particular remedy, need not be replied to specifically by answer. *Ib.*

40. Where a libel alleges that a particular agreement was made, and a written instrument was executed, and the instrument embodies the substance of such agreement, an admission by the answer of the execution of the instrument is substantially an admission of the contents of the instrument. *Ib.*

41. The practice in admiralty does not exact a course of technical proceedings. *Ib.*

42. If the answer admits, to a reasonable intendment, facts stated in the libel, it will be sufficient, though loose and informal as a pleading. *Ib.*

43. (Oct., 1845.) An allegation in the answer, that all the parties are foreigners and the ship is foreign property, must be proved by the respondent or claimant. *The Brig Napoleon*, Olc. Adm. 208.

44. (April, 1846.) The objection that a demand in suit is stale, or barred by the statute of limitations, cannot be made without being properly stated in the pleadings. *The Steamboat Swallow*, Olc. Adm. 334.

45. (April, 1846.) When the owner and mortgagee of a ship both appear and file answers to the libel of a bottomry holder, it is competent for each to claim in his answer, or by a separate

petition, that the proceeds of the vessel, after satisfaction of the bottomry security, be paid to him. *The Ship Panama*, Olc. Adm. 343.

46. (April, 1848.) Where a sworn answer is not demanded by the libel, the libellant may contradict its allegations by proofs without filing a replication¹ thereto, or notice of such proof. *The Infanta*, Abb. Adm. 263.

47. (Nov., 1848.) Where the defense in the answer, in a cause of collision between a schooner and a steamboat, rested on faults imputed to the schooner in holding her course across the bows of the steamer under circumstances in which it was her duty to have gone about; and the defense set up by the proofs rested upon faults committed on the part of the schooner in an attempt to come about abruptly, and falling off or drifting in the attempt against the steamer, — *Held*, that the latter defense was a deviation from the answer, and that under the pleadings the claimants were not entitled to the benefit of it. *The Washington Irving*, Abb. Adm. 336.

48. (Feb., 1849.) Where, in answer to a libel for wages, the claimants set up a discharge of the libellant in a foreign port by order of the consul, it is incumbent on them to set forth in their answer a state of facts justifying the discharge relied on, and to support the allegations by adequate proof. *The Atlantic*, Abb. Adm. 451.

49. (April, 1867.) Where a libel was filed on a bottomry bond, on which process was issued and returned, and on the return a state sheriff filed a claim and answer, setting up that he was in custody of the vessel at the time of the alleged seizure by the marshal, and the libellant moved to strike out the claim, — *Held*, that the power of the sheriff to bring, in this way, proceedings of a state court before a United States court for adjudication as to their validity, is doubtful. *The Steamer Circassian*, 1 Ben. 129.

50. That where a conflict of this sort arises between a sheriff and a marshal, the sheriff has two courses open to him, — either to apply to the state court to be protected, or to apply by petition to the federal court to order its officer to withdraw. *Ib.*

51. The sheriff's answer stricken out, and leave given him to apply by petition. *Ib.*

¹ See Rule 51.

52. (March, 1868.) Where a libel was filed for seaman's wages, and the answer set up that the libellant had been paid in full before suit brought, and had released the vessel and her master and owners from all claim by a release under seal, and the libellant excepted to the answer because the date of the release was not set forth, nor the time when it was made, nor the consideration for which it was given, — *Held*, that the defense was payment, and the release was only evidence of it, and it was not necessary to state its date or consideration, or when it was given. *The Steamship Western Metropolis*, 2 Ben. 212.

53. (March, 1868.) In an action against a vessel for supplies furnished to her in a foreign port, where the libel alleged that they were furnished on her credit, and the answer denied that they were furnished on the request of the owner or the credit of the vessel, and averred that the owner was in good credit in the foreign port, — *Held*, that the admission that the vessel was in a foreign port was an admission of an apparent necessity for the credit of the vessel. That, on the pleadings, the only question was, whether the supplies were furnished. *The Steamboat Washington Irving*, 2 Ben. 323.

54. (Nov., 1868.) Where a libel alleged that 303 bales of cotton were shipped on board a steamer to be carried to New York, and that a bill of lading therefor, a copy of which was attached, was signed by the agents of the vessel, and that seven of the bales were not delivered, and were not lost by perils of the sea, and the answer admitted that the vessel agreed to carry the 303 bales, and that her agents signed a bill of lading, and alleged that a copy of it was attached to the libel, and that only 273 bales were ever received on board the vessel, but that the rest were brought to New York by another vessel, and discharged upon the wharf, on due notice to the consignee, — *Held*, that, on the pleadings, the authority of the agents to bind the vessel by the contract in the bill of lading must be considered as admitted. *The Steamship Saragossa*, 2 Ben. 544.

55. (Feb., 1869.) Where an answer contained allegations which were inconsistent, but it had not been excepted to, and the case went to trial, — *Held*, that the court must take the allegation which operated most strongly against the claimants to be the one really made. *The Bark Olbers*, 3 Ben. 148.

56. (June, 1871.) In a case of collision for the sinking of a

schooner by a steamer in Long Island Sound, the libel alleged that the schooner was "sunk," and the answer admitted that "the schooner with her cargo was sunk and lost." The steamer was held liable, and the commissioner, to whom it was referred to ascertain the damages, reported as such damages the whole value of the schooner and her cargo. Exceptions were filed to the report, because the commissioner had allowed such whole value, in the absence of any proof that the libellants had tried to raise the vessel, or that she could not be raised; because he had allowed such whole value although one of the libellants who owned one half of the schooner had insurance on her, and had been paid by the insurers for a total loss; and because one half of the cargo was the property of a party who was not a libellant. *Held*, that, on the pleadings, no proof was necessary that the schooner could not be raised; that the facts in relation to the insurance constituted no defense. *The Steamer Metis*, 5 Ben. 203.

57. (Oct., 1871.) Parties claiming an interest in freight money paid into the registry should file their claim and set up their rights by answer. *The Freight Money of the Canal Boat Monadnock*, 5 Ben. 357.

58. (March, 1872.) A seaman filed a libel against a cargo of coal, to enforce a lien for his wages upon freight money alleged to be due from E. & M. on the cargo. The cargo was seized under the process, and was claimed by the C. S. Co., but the only answer put in was one by E. & M. *Held*, that the practice was irregular, but the irregularity would not be noticed, as no objection had been taken to it. *Conley v. Freight of Canal Boat, &c.*, 6 Ben. 12.

59. (April, 1872.) A sloop at anchor was sunk in the night, and a libel was filed against a schooner to recover the damages, alleging that the schooner negligently ran into her and sank her, in consequence of the schooner's being insecurely anchored. The answer of the schooner denied any collision, and alleged that the schooner was properly anchored, and dragged her anchors through the resistless force of the elements alone, and alleged that, if any injury was done to the sloop by the schooner, it was the result of inevitable accident. *Held*, that, on the pleadings, the burden of proof was on the schooner to show that the collision [which was proved] was caused by inevitable accident. *The Schooner Duchess*, 6 Ben. 48.

60. (Dec., 1872.) An admission in the answer to a libel for seaman's wages, that the seaman shipped for the voyage and performed the service described in the libel, though coupled with a denial that any amount is due to him, and an allegation that the seaman was guilty of smuggling, by reason of which the vessel was subject to penalties and the seaman forfeited his wages, is sufficient, in the absence of evidence, to entitle the seaman to a decree for the amount of his wages. *The Brig Belle*, 6 Ben. 287.

61. (Dec., 1879.) It is more proper pleading, if the claimant of a vessel object because the master of his vessel failed to communicate with him before taking up money on bottomry, that he should aver by way of defense that the circumstances were such as to require such communication. *The Bark Edward Albro*, 10 Ben. 669.

62. (Dec., 1879.) Where a vessel was repaired in the port of New York, upon the order of D. and R., to whom she was consigned, proceeded on her voyage, and was sold abroad on a claim for bottomry, and thereafter the ship-carpenter who did the repairs in New York brought suit against the owners, who resided in New York and Brooklyn, and they answered separately, E. setting up that the consignees, D. and R., were owners *pro hac vice* under an agreement to manage and control the vessel, receive all earnings and pay for all repairs and supplies, for a specified money consideration; and J. setting up the same agreement and also that libellant had knowledge of it, — *Held*, that it was not open to the defendants to dispute the authority of D. and R. to order the repairs; and having admitted their ownership and accepted the repairs in the increased value of their vessel they are *prima facie* liable to pay therefor; that while it appeared from the proofs that the defendants were actually mortgagees out of possession, no such defense was set up in their answers, and no question of their liability as such could therefore be considered. *McCarthy v. Eggers & Jansen*, 10 Ben. 688.

63. At the trial the defendant J. asked leave to amend his answer and set up that he was mortgagee out of possession. *Held*, that, having pleaded ownership and set up an agreement only consistent with ownership, and having stood by at the trial, and applied to amend only after the effort to prove charter by

the other owner had failed, he cannot now be allowed to amend. *Ib.*

64. (Aug., 1836.) There can be no specific forfeiture or deduction of seamen's wages, for misconduct which is not specially charged in the answer. *Hart & Gilman v. The Brig Otis*, Crabbe, 52.

65. (Aug., 1837.) Where the credits in a seaman's account for wages as stated by the captain in his answer, are not objected to, and there is no evidence to contradict the statement, and the amount credited differs but slightly from that claimed in the libel, the court will take the captain's credit as the proper one. *Lang v. Holbrook*, Crabbe, 179.

66. (1856.) Answers to special interrogatories are considered as analogous to the decisory oath of the civil law, and no more evidence for one party than the other, and will not be conclusive for either, where the weight of the other proof in the case preponderates against the fact sworn to, or when, by self-contradiction, suspicion attaches to the fidelity of the answers. *The L. B. Goldsmith*, Newb. Adm. 123.

67. (March, 1853.) The chancery rule requiring two witnesses, &c., to overcome the answer of the defendant when responsive to the bill, does not obtain in admiralty, even with regard to answers to special interrogatories. *Eads & Nelson v. The Steamboat H. D. Bacon*, Newb. Adm. 274.

68. (Feb., 1874.) The defense of stale claim must be set up in the answer, and will not avail where the owner has retained a portion of the purchase-money in his hands, and the suit is defended in the interest of the vendor. *The Melissa*, 1 Brown, 476.

Rule 28. — Exceptions to Answer. Costs.

The libellant may except to the sufficiency, or fullness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and, if the court shall adjudge the same exceptions, or any of them, to be good and valid, the court shall order the defendant forthwith, within such time as the court shall direct, to answer the same, and may further order the defendant to pay such costs as the court shall adjudge reasonable.

1. (March, 1864.) Exception for impertinence, to an allegation in an answer which serves no legal purpose, and is a mere slur upon the libellant, allowed. *The Pioneer*, Deady, 58.

2. An allegation of misconduct on the part of an engineer [of a steamboat], as a cause of forfeiture of wages, must state the particular acts of misconduct relied on, with the circumstances of time and place. *Ib.*

3. C. brought suit against the steamboat P. for wages as engineer; the claimant, in its answer, set up that, prior to the commencement of such suit, it had commenced an action against C. in the territory of Washington, to recover damages for injuries to the steamboat P., caused by the misconduct of the latter as engineer thereon, and caused a garnishee process to be served upon K., the master, and some time owner of the steamboat P. during the period that C. was employed upon her as engineer. *Held*, on exception, that the allegation was impertinent. *Ib.*

4. (Jan., 1871.) The general answer in admiralty should be pertinent and responsive to the narration or allegations in the articles of the libel; and if the response is not full, explicit and distinct, exceptions for insufficiency lie to compel a sufficient answer. *The California*, 1 Sawyer, 463.

5. But if the answer is responsive to the libel, no exceptions will lie to it, on the ground that it is not a defense to the suit, whether the matter is impertinent or not. *Ib.*

6. Exceptions in admiralty, their nature and office defined. *Ib.*

7. It is impertinence to blend matter intended as a defensive allegation, with the response or answer to an allegation of the libel. *Ib.*

8. (Dec., 1830.) Impertinent and irrelevant allegations in an answer stricken out on motion. *The Gustavia*, 1 Blatchf. & H. Adm. 189.

9. Whether supplies furnished to a vessel are necessary is a conclusion of law, and the claimant, in answer to a libel by a material-man, is not required to either admit or deny that the articles furnished were necessities. *Ib.*

10. (Jan., 1831.) An answer which neither admits nor denies a material averment in the libel is insufficient, and may be excepted to on that ground. *The Elizabeth Frith*, 1 Blatchf. & H. Adm. 195.

11. Where a libel claims extra wages in satisfaction of a short allowance of provisions, under the ninth section of the act of July 20, 1790 (1 Stat. 135), the answer must set forth precisely whether the vessel shipped the quantity and quality of provisions required by the statute, or an exception will lie for insufficiency. *Ib.*

Rule 29.—Libel Pro Confesso. Setting aside Default. Costs.

If the defendant shall omit or refuse to make due answer to the libel upon the return-day of the process, or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken *pro confesso* against him, and the court shall proceed to hear the cause *ex parte*, and adjudge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel, at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

Rule 30.—Attachment for Further Answer. Order Pro Confesso.

In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken *pro confesso* against the defendant, to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

1. (April, 1839.) Each party in the admiralty has a right to require the personal answers of the other under oath to any interrogatories touching the matter in issue. *The David Pratt*, 1 Ware, 510.

2. If the defendant refuses to answer any interrogatory propounded by order of the court, the charge in the libel to which the interrogatory relates will be taken *pro confesso*. *Ib.*

3. The answers to such special interrogatories are evidence in the cause as well in favor as against the party answering. *Ib.*

Rule 31. — Objection by Defendant to answering.

The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel, which will expose him to any prosecution or punishment for a crime, or for any penalty or any forfeiture of his property for any penal offense.

Rule 32. — Defendant may require Answer of Libellant.

The defendant shall have a right to require the personal answer of the libellant upon oath or solemn affirmation to any interrogatories which he may, at the close of his answer, propound to the libellant touching any matters charged in the libel, or touching any matter of defense set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution, or punishment, or forfeiture, as is provided in the thirty-first rule. In default of due answer by the libellant to such interrogatories, the court may adjudge the libellant to be in default, and dismiss the libel, or may compel his answer in the premises by attachment, or take the subject-matter of the interrogatory *pro confesso* in favor of the defendant, as the court, in its discretion, shall deem most fit to promote public justice.

Rule 33. — Court may dispense with Answer on Oath, when. Commission to take Answer.

Where either the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable.

Rule 34. — Intervention. Stipulation.

If any third person shall intervene in any cause of admiralty and maritime jurisdiction *in rem* for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required, by order of the court, to make due answer; and such further proceedings shall be had and decree rendered by the court therein

as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.

1. (Feb., 1817.) *Intervention*, in the practice of the civil law, nature of. *Laidlaw v. Organ*, 2 Wheat. 192, note *e*.

2. (Dec., 1869.) A suit for salvage cannot be abated on the objection of claimants, that others as well as the libellants are entitled to share in the compensation. The remedy of such others is to become parties to the suit, or to make a claim against the proceeds, if any, in the registry of the court. *The Camanche*, 8 Wall. 448.

3. (April, 1853.) Under the thirty-fourth admiralty rule, the underwriter who has accepted an abandonment, which divests the original claimant of all interest, may be admitted to intervene and become the *dominus litis* in a suit *in rem*. *Brig Ann C. Pratt*, 1 Curt. C. C. 340.

4. (Sept., 1856.) It is a common practice in equity and admiralty courts, to permit a party who becomes interested in the subject-matter of a litigation during its pendency, to come in and protect his interest, if application is made within a reasonable time. *The Jenny Lind*, 3 Blatchf. 513.

5. Where, the day after the levying of an attachment issued by the District Court on a libel *in rem* against a vessel, there was a default in the payment of an instalment due on a mortgage on the vessel, — *Held*, that such default gave to the mortgagee the right to the possession of the vessel, and that it was proper to permit him to come in and defend the suit. *Ib*.

6. (Dec., 1826.) A decree of a court of admiralty on a proceeding *in rem* for a forfeiture is conclusive on all persons claiming an interest in the thing. *The Mary Anne*, 1 Ware, 99.

7. Any person claiming an interest in the thing may intervene and make himself a party to the cause, and contest the forfeiture so far as the decree would be conclusive on his rights. *Ib*.

8. A creditor who has attached the thing in a suit against the owner before the seizure may intervene in the case as a claimant. *Ib*.

9. (Feb., 1856.) Joinder of parties. In suits *in rem* all persons having claims of a like nature against the thing may join in a single libel for the purpose of having that question decided, whether the claims arise from tort or contract. *The Young Mechanic*, 3 Ware, 58.

10. When a vessel is arrested by a lien creditor, all other such creditors may intervene by summary petition without having the vessel arrested again, and have their claims allowed. *Ib.*

11. *Quære*, when the vessel is delivered on a stipulation for her full value, whether lien creditors [who intervene and have their claims allowed] may have the same remedy on the stipulation that they have against the vessel remaining in the custody of the court. *Ib.*

12. (Oct., 1832.) An administrator appointed in another state, who has not taken out letters within the jurisdiction of this court, may intervene in behalf of his intestate, in a suit *in rem* in this court against a vessel which was the property of the intestate at his death. *The Boston*, 1 Blatchf. & H. Adm. 309.

13. (Nov., 1844.) A mortgagee of a vessel can intervene in a suit by a bottomry holder against the vessel, and contest the validity of the bottomry or its priority of lien, as against his mortgage. *Furniss v. Brig Magoun*, Olc. Adm. 55.

14. (June, 1848.) Where an attorney in fact of an absent owner of property intervened on his behalf by claim and answer, and the owner afterwards came within the United States, and moved to be allowed to defend in his own name, — *Held*, that he was entitled to do so on payment of costs of opposing the motion, and on entering into a new stipulation for costs. *The Bark Laurens and Twenty Thousand Dollars in Specie*, Abb. Adm. 302.

15. (Nov., 1867.) Where a libel was filed by the owners of a schooner, which was sunk in a collision, to recover for her loss, and contained the allegation that it was filed “in behalf of the libellants and all parties having a common right of action arising out of the collision, who may intervene as co-libellants or otherwise,” and, after a decree for the libellants, and while the reference to ascertain the damages was pending, insurers who had paid a loss on the cargo applied to the court on petition to be made co-libellants, — *Held*, that, as no injustice would be caused to the claimants, the application would be granted, although the court saw no necessity for or advantage in the proceeding. *The Steamer City of Paris*, 1 Ben. 529.

16. That a special reference must be had, to take and report to the court the evidence produced by the petitioners to show their right to participate in the decree, and any evidence in opposition. *Ib.*

17. (Dec. 1870.) Seamen executed assignments of their wages to the mate, but without consideration, and the mate filed this libel against the vessel, to recover the wages of all. *Held*, that the seamen might file a petition to be made co-libellants, and on such petition being filed, and the cancellation of their assignments to the mate, they would be entitled to decrees for their wages. *The Bark Elwin Kreplin*, 4 Ben. 413.

18. (April, 1870.) A mortgagee of a vessel has a right to intervene in an admiralty suit, for the protection of his interest. *The Old Concord*, 1 Brown, 270.

Rule 35.—Stipulations, how Taken.

The stipulations required by the last preceding rule, or on appeal, or in any other admiralty or maritime proceeding, shall be given and taken in the manner prescribed by rule fifth as amended.

Rule 36.—Exceptions to Libel or Answer.

Exceptions may be taken to any libel, allegation, or answer for surplusage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found.

1. (March, 1866.) An exception that a libel does not state facts sufficient to constitute a cause of suit or forfeiture is too general; it should state in what particular the facts are insufficient. *The Active*, Dedy, 165.

2. (Sept. 1830.) A libel brought before the right of action is perfected must be dismissed, if duly excepted to on that ground, though such right becomes perfected during the progress of the suit. *The Martha*, 1 Blatchf. & H. Adm. 151.

3. (Jan. 1831.) An exception for irrelevancy taken to a pleading which is not irrelevant, but is only insufficient, will be overruled. *The Elizabeth Frith*, 1 Blatchf. & H. Adm. 195.

4. (Oct., 1832.) An objection to the competency of an administrator to appear as claimant in a suit *in rem* must be taken on his appearance, and before sale of the property and payment of the proceeds into court. *The Boston*, 1 Blatchf. & H. Adm. 309.

5. (Nov., 1844.) Objections to an action merely formal in their character cannot be taken on final hearing. *Furniss v. Brig Magoun*, Olc. Adm. 55.

6. Exceptions, dilatory or declaratory, should be interposed on return-day of process, or at the day appointed for answering the libel. *Ib.*

7. If the objection intended to be made is, that the suit was commenced before the cause of action was matured, but it had become matured before the hearing, the objection will be considered waived, particularly after an answer or claim is filed. *Ib.*

8. There would be still less reason for allowing such objection after the vessel sued had been condemned and sold in another action, and her proceeds placed in court subject to these actions and others in prosecution against him. *Ib.*

9. (April, 1845.) By the rules of admiralty practice, pleas or exceptions must set forth the matter in dispute in perspicuous and definite terms; and it is not necessary that they should embody the formalities required in pleading at common law or in chancery. *The Schooner Navarro*, Olc. Adm. 127.

10. (Nov., 1866.) A canal-boat in tow of a steamboat was injured in a collision with another steamboat. The owner of her filed a libel against both vessels, in which he did not set out the facts of the collision, though the movements of the vessels were seen by a person on board the canal-boat. The claimants excepted to the libel, *Held*, that exceptions to a pleading in admiralty have the effect of a demurrer, and also that of a motion to make the pleading more definite and certain. That to make cases of collisions like this, exceptions to the general rule, which requires a full statement of the facts of the collision, would be to permit the parties to come to trial without any preliminary statement from either party, which would be of any assistance to the court, or would apprise the parties most in interest, of the facts which they are called on to meet. *Quinn v. Steamboat Transport and Propeller W. E. Cheney*, 1 Ben. 86.

11. Whether such exceptional pleading might be allowed where

the libellant was unable to give any statement of the facts of the collision, *quære. Ib.*

12. The present is not such a case, and the libel must be reformed, by setting forth, as far as practicable, the material circumstances attending the collision in question. *Ib.*

13. (July, 1867.) The court has the power, in any stage of the case, to require the parties to supply any defect in the pleadings, though counsel can appeal to the court for that purpose only by exceptions filed at the proper time. *The Bark Havre.—The Ship Scotland*, 1 Ben. 296.

14. (July, 1868.) Where a libel for a collision failed to convey any idea of the manner in which the collision took place, but was not excepted to, and on the hearing a decree was made dismissing it, — *Held*, that no costs would be given, because the libel should have been excepted to and dismissed. *The Steam Ferry-boat Warren*, 2 Ben. 498.

15. (Nov., 1871.) In an action brought against a ship by a consignee of cargo, to recover damages for a non-delivery of cargo, the answer set up, as a defense, that, when the suit was commenced, another action was pending in the Supreme Court of the state of New York, between the consignee and the owner of the ship, for the same cause of action. *Held*, that whether the pendency of the suit in the state court would be a good plea in abatement or not, the objection should have been taken, if good, by a dilatory or declinatory exception, under Rule 76 of the District Court; and that, moreover, that suit was not of the same nature as this, being a suit *in personam*, while this is *in rem*. *The Ship Prince Albert*, 5 Ben. 386.

16. (Sept., 1873.) Objections to a libel for want of specific allegations of fault should be taken by exceptions, and if taken at the hearing, an amendment will be permitted. *The Coleman & Foster*, 1 Brown, 456.

Rule 37. — Foreign Attachment. Garnishee.

In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation as to the debts, credits, or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or

neglect so to do, the court may award compulsory process *in personam* against him. If he admits any debts, credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

1. (April, 1858.) It is the right and duty of a garnishee in admiralty, to put in an answer. *Shorey v. Rennel, & Kimball, Garnishee*, 1 Sprague, 418.

2. The libellant has not the right to contest the answer of the garnishee. *Ib.*

3. If a garnishee in admiralty make default, execution does not, in the first instance, go against him personally, or against his property, but only against the debts, effects, or credits of the principal in his hands. *Ib.*

4. Upon such default, the libellant may have compulsory process to obtain an answer. *Ib.*

5. If, however, he does not need a disclosure, but can satisfy the court, by affidavits, that the garnishee has debts, effects, or credits in his hands, the libellant may have execution against them without an answer having been put in. *Ib.*

6. After execution against debts, effects, or credits in the hands of the garnishee, and a refusal by him to pay, he has not the right to discharge himself by putting in an answer. *Ib.*

7. *Seemle*, that, after such refusal, the garnishee should be summoned in, that he may show other causes of discharge if any there be. *Ib.*

8. After default by the garnishee, the court may, in its discretion, allow him to put in an answer upon terms. *Ib.*

Rule 38. — Order to bring into Court.

In cases of mariners' wages, or bottomry, or salvage, or other proceedings *in rem*, where freight or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the court may, upon due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and, if no sufficient cause be shown, the court may order the same to be brought into court to answer the exigency of the suit, and, upon failure of the party to comply with the order, may award an attachment, or other compulsive process, to compel obedience thereto.

1. (Feb., 1837.) In proceedings *in rem*, the thing is taken into the custody of the court, and remains in its custody until all claims before the court are finally adjusted and satisfied. *The Phebe*, 1 Ware, 368.

2. The officer in whose hands it is, is the official keeper of the court, and, if the thing is taken from him, its redelivery will be enforced by attachment. *Ib.*

3. It is no objection to the issuing of a summary process, on motion against the person who has taken the thing from the hands of the keeper, that he is neither a party in the cause nor an officer of the court. *Ib.*

4. If after the sale by the marshal on a *venditioni*, the purchaser obtains possession of the property without paying the price, the court will enforce by summary process either a redelivery of the property in specie, or the payment of the purchase-money. *Ib.*

5. (Oct., 1867.) It is no good defense to a petition that freight may be brought into the admiralty court to answer the exigency of suits for mariners' wages and materials which are a charge on the freight, that the consignee, before the libels were filed, was summoned as trustee or garnishee of the ship-owner in a court of common law. *The Caroline*, 1 Lowell, 173.

6. The courts of common law of Massachusetts have no power to adjust maritime liens upon a fund attached under the foreign attachment law of that state; and the consequence of giving priority to such an attachment might be the destruction of the liens. The court of common law would be bound to guard against this consequence by discharging the supposed trustee, or by waiting till the liens were adjusted; and this court may proceed to adjust them, and may order the freight to be brought in for that purpose. *Ib.*

7. Such a course involves no conflict of jurisdiction, and is not inconsistent with the decisions in *Taylor v. Carryl*, 20 How. 583. and *Freeman v. Howe*, 24 How. 450. *Ib.*

8. (Sept., 1865.) Where a vessel had been sold on a *venditioni exponas*, for less than enough to pay the claims against her, and one of the libellants alleged that her master and one Smith had stripped her of her sails before she was sold, a monition was issued to them to show cause why they should not produce the sails. *The Schooner George Prescott*, 1 Ben. 1.

9. On the return to the monition, the master showed that he

had sold the sails, and claimed to hold the proceeds under a mortgage on the vessel. He was ordered to pay the proceeds into court to meet whatever liens were on the vessel. *Ib.*

Rule 39.—Dismissing Libel for Want of Prosecution.

If, in any admiralty suit, the libellant shall not appear and prosecute his suit, according to the course and orders of the court, he shall be deemed in default and contumacy; and the court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

1. (Aug., 1841.) A case was called for hearing, and the parties were ready to proceed, but the libellant had not filed any replication.¹ The court, at the request of both parties, appointed a particular day for the hearing of the case, and on its being then called, the libellant moved for a postponement, having no witnesses present, and having issued no subpœna till that day. The court gave the libellant the option of going to trial on the libel, answer, and replication,¹ which being refused, the libel was dismissed. *Douglass v. The Ship Washington*, Crabbe, 452.

Rule 40.—Rehearing after Default.

The court may, in its discretion, upon the motion of the defendant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.

1. (May, 1839.) A rehearing in admiralty cannot be had after the term of the court has passed, at which the decree was made. *Steamboat New England*, 3 Sumn. 496.

2. *Quære*, whether a libel of review, in the nature of a bill of review in equity, will lie in a court of admiralty. *Ib.*

3. (Oct., 1865.) A petition for review, filed after the term at which the decree was rendered, and after the decree had been executed, will be entertained by a court of admiralty, when actual

¹ Replications are not now in use, in admiralty proceedings. See Rule 51.

fraud is charged, and the libellant is without fraud, and would otherwise be without remedy. *Northwestern Car Co. v. Hopkins*, 4 Biss. 51.

4. (June, 1870.) A motion to open a decree in admiralty, entered by default, must be made within ten days after entry; otherwise it must be denied. *Northrop v. Gregory*, 2 Abb. U. S. 503.

5. Such motion must be accompanied by the answer proposed to be filed, or at least by a statement of the grounds of defense intended, so that the court can determine whether the defense is meritorious. *Ib.*

6. (Sept., 1873.) Courts of admiralty have power to vary their own decrees. In the American practice, a summary rehearing on motion can be granted only during the term at which the decree was made. *Snow v. Edwards*, 2 Lowell, 273.

7. In defaulted actions, the summary jurisdiction to rehear is limited to ten days, irrespective of terms of court, by admiralty Rule 40 of the Supreme Court. *Ib.*

8. After the term has passed in ordinary cases, and after ten days in defaulted cases, the court can entertain a libel of review. *Ib.*

9. Decisions and *dicta* on the foregoing subjects, examined. *Ib.*

10. In a libel for review by the defendant in a defaulted action, he may contradict the officer's return in that action. *Ib.*

11. (Sept., 1830.) A court of admiralty will not, except with the free consent of all the parties to be affected, grant a rehearing, or modify its definitive decree, after the term in which the decree is rendered. If the court has the power to do so, such a practice has not been adopted. *The Martha*, 1 Blatchf. & H. Adm. 151.

12. A decree made on a rehearing without such consent, modifying a final decree made at a previous term, was held to be a nullity. *Ib.*

13. *Semble*, that a consent for a rehearing by the parties to a suit will not affect the rights of a surety in a stipulation for costs, who has been discharged by a previous final decree. *Ib.*

14. (Sept., 1865.) As it appeared on the evidence that the vessel was sold for her full value, excluding the sails, the court would not disturb the sale. *The Schooner George Prescott*, 1 Ben. 1.

15. As it appeared that the seamen had not been paid their wages, the application to open the decree rendered in their favor must be denied. *Ib.*

16. The master's right to a lien being disputed, and it not being made certain that the amount claimed by him was due, and the applicant to open the decree being free from laches, the decree in favor of the master should be opened, and the applicant allowed to contest his claim. *Ib.*

17. (Oct., 1868.) Where a vessel had been libeled by an owner of cargo shipped on board and sold by her master for the necessities of the vessel, and was condemned by default and sold, and the proceeds were insufficient to pay the libellant's claim, and thereafter a material-man, who had furnished supplies to the vessel before the sale of the cargo, applied to stay proceedings and open the default as to him, — *Held*, that the lien for the cargo sold was prior to that for the materials previously furnished; that the owner of the cargo, therefore, ought not to be put to the expense of contesting the material-man's claim, and that the petition must be denied. *The Schooner Grapeshot*, 2 Ben. 527.

18. (Dec., 1869.) Process being issued, with an attachment clause, the marshal attached property of the respondents, but afterwards discharged it from custody without any order of court, and served the process upon them personally. On the return of the process, a default was taken against them which they moved to open. The libellant insisted that, as a condition of opening the default, they should be required to give security as on a discharge of property attached. *Held*, that, under the circumstances of the case, the condition was a reasonable one, and that the default would be opened, without costs, on the respondents executing such a stipulation. *Van Winkle v. Jarvis*, 3 Ben. 573.

19. (May, 1877.) Where libels were filed against two ferry-boats, and they were seized by the marshal under the processes, and no answers were filed, but after return of processes an application was made by J., as receiver appointed by a state court, to vacate the marshal's returns, and denied, and then a petition was filed by J., averring want of jurisdiction and praying surrender to him by the marshal, which was dismissed upon answer and hearing, and thereafter the libellants obtained interlocutory decrees and a decree against stipulators upon a bond in double

the claim, which had been given by J. under the 34th Admiralty Rule, on filing his petition, after all which J. applied to have the defaults against him opened, and for leave to answer, — *Held*, that his right to answer had been absolutely waived, and that the court had no power to open the default. *The Ferryboats Roslyn & Midland*, 9 Ben. 119.

20. (April, 1878.) A decree of the District Court cannot be opened, and an amended answer allowed to be filed, on the ground that, since the rendition of the decision of the District Court, it has been ascertained that, prior to such decision, the Circuit Court for the district had rendered a decision upon the point at issue, conflicting with the decision of the District Court. The proper course in such a case is to take an appeal, and so test the correctness of the conclusion arrived at by the District Court. *Thomassen v. Whitwell*, 9 Ben. 458.

21. (June, 1879.) On motion for a rehearing, on the ground that, since the trial, the libellant's witnesses testified differently in another action growing out of the same collision, the motion was denied. *The Tug John Cooker & The Barge James W. Eaton*, 10 Ben. 488.

22. (1794.) Motion to review a decree must fail after writ of error lodged, and if the exceptions to the jurisdiction might have been taken before the decree passed. Otherwise if error appear on the face of the record, or if new matter be discovered. *M'Grath v. Candallero*, Bee, Adm. 64.

23. (1856.) Upon a motion to vacate an order *pro confesso*, and for leave to answer, the respondent must satisfactorily account for his laches, and exhibit by answer or affidavit a meritorious defense. *Scott v. The Propeller Young America*, Newb. Adm. 107.

24. (March, 1857.) *It seems* that a court of admiralty has no general power, at least after the expiration of the term, to set aside a final decree on the ground of oversight, inadvertence, or mistake. *The Illinois*, 1 Brown, 13.

25. The ten days allowed by Rule 40 for setting aside a decree are restrictive, and a motion made after this time cannot be entertained. *Ib.*

26. (March, 1861.) A vessel bought with the money of C. was enrolled in the name of M. as owner and master, he agreeing to hold her in trust for C. until all his advances had been repaid.

While in the hands of M., who was navigating her for charterers, she was attached, condemned, and sold at marshal's sale, without the knowledge of C., and was bid in by the charterers. Upon learning of the sale, C. came into court, filed his petition for the remnants, and six weeks afterwards withdrew this and filed another, praying that the sale and decree of condemnation might be set aside, and he permitted to intervene and defend. The vessel in the mean time had been delivered to the purchasers, who had taken her to Canada and repaired her, and the claims upon which she had been libeled had been paid. Petition denied. *The Kaloolah*, 1 Brown, 55.

27. A simple allegation of fraud in a petition to set aside a sale, without setting forth the facts which constitute the fraud, is insufficient. *Ib.*

Rule 41. — Sales, by whom. Proceeds.

All sales of property under any decree of admiralty shall be made by the marshal or his deputy, or other proper officer assigned by the court where the marshal is a party in interest, in pursuance of the orders of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

1. (Feb., 1837.) When property has been ordered to be sold by the admiralty on process *in rem*, the gross proceeds of the sale, deducting only the expenses of the sale, are paid into the registry. *The Phebe*, 1 Ware, 360.

2. All claims, liens, or charges on the property must be presented to the court for allowance, and are not paid but by order of the court. *Ib.*

3 The liens which the officers of the court have for their fees and expenses do not, in this respect, differ from other liens or privileged debts. *Ib.*

4. (April, 1849.) The deputy marshal is an officer of the District Court, amenable to its jurisdiction for malfeasance in office; and this jurisdiction may be exercised by summary order or attachment for contempt. *The Bark Laurens and Twenty Thousand Dollars in Specie*, Abb. Adm. 508.

5. The marshal is personally answerable (under Supreme Court

Rule 41, and District Court Rule 158) for any failure to pay moneys attached by him into court forthwith; and the responsibility of the deputy is no less stringent than that of the marshal. *Ib.*

6. The resignation of office by an officer of the court does not oust the court of jurisdiction to proceed against him by attachment for contempt for any acts of misconduct committed by him while in office. *Ib.*

7. Where specie, although consisting of foreign coin, is attached under process of the court, the officer is bound to pay it into court as *money*; and it is not to be considered as *cargo* merely. *Ib.*

8. Under the act of April 18, 1814, (3 Stat. 127,) which directs that moneys received by officers of the United States courts shall be deposited in bank, &c., the court is authorized to require its officers to pay moneys received by them into court, to be deposited in bank by the clerk of the court. *Ib.*

Rule 42.—Moneys to be deposited in Bank.

All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name of the court, and shall not be drawn out, except by a check or checks, signed by a judge of the court and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a memorandum and copy of all the checks so drawn and the date thereof.

Rule 43.—Petition for Proceeds in Registry.

Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceeding, to intervene *pro interesse suo* for a delivery thereof to him; and upon due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or, upon a hearing, be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

1. (Feb., 1819.) The demand of the ship-owners for freight and general average, in such a case, is to be pursued against that portion of the proceeds of the cargo which is adjudged to the owners of the goods, by a direct libel or petition, and not by a claim interposed in the salvage cause. *The Sybil*, 4 Wheat. 98.

2. (Feb., 1824.) The claim of seamen for wages, on a voyage undertaken in violation of the Slave Trade Acts, out of the proceeds of the forfeited vessel in the registry, rejected. *The St. Jago de Cuba*, 9 Wheat. 409.

3. The claims of seamen for wages and of material-men for supplies, where the parties were innocent of all knowledge of or participation in the illegal voyage, preferred to the claim of forfeiture on the part of the government. *Ib.*

4. (Jan., 1845.) Whenever proceeds are rightfully in the possession and custody of the admiralty, it is an inherent incident to the jurisdiction of that court, to entertain supplemental suits by the parties in interest, to ascertain to whom those proceeds rightfully belong, and to deliver them over to the parties who establish the lawful ownership thereof. *Andrews v. Wall*, 3 How. 568.

5. (Oct., 1873.) Where claims on the proceeds in the registry, of a vessel sold are not maritime liens, the District Court cannot distribute those proceeds in payment of the claims, if the owners of the vessel oppose such distribution. *The Lottawanna*, 20 Wall. 201.

6. A creditor by judgment in a state court, of the owners of the vessel, even though he have a decree *in personam* also in the admiralty against them, cannot seize, or attach, on execution, proceeds of the vessel in the registry of the admiralty. *Ib.*

7. (Oct., 1874.) Any person having a specific lien on, or a vested right in, a surplus fund in court, may apply by petition for the protection of his interest under the forty-third admiralty rule. *The Lottawanna*, 21 Wall. 559.

8. (Oct., 1814.) Where a party claims under an attachment, he must file a caution in court, to hold the proceeds remaining after satisfying prior claims. *The Louisetta*, 2 Gall. 307.

9. (Oct., 1846.) When the vessel has been previously libeled for a subsequent bottomry bond, and for wages of the seamen, and duly sold to pay them, as such liens have precedence over

prior ones, a person holding a mortgage of the vessel to secure a debt for advances made for her last voyage, is allowed to interpose a claim on the balance of the proceeds in the custody of the court, whether he could or could not sustain a libel to enforce it against the ship originally. *Leland v. Ship Medora*, 2 Woodb. & M. 93.

10. (March, 1867.) A fund arising out of a *res* upon which seamen have a lien can be followed in the admiralty, though the thing itself has been destroyed, or is out of the jurisdiction. *Flaherty v. Doane*, 1 Lowell, 148.

11. (July, 1869.) By the lien law of Massachusetts (Gen. Stats. ch. 151), the liens created under that law are postponed to mariners' wages. But they take precedence of an earlier mortgage. The admiralty has no jurisdiction to enforce these state liens, but it has power, as have all other courts, to pay out a fund in its registry to the persons who have valid liens upon it. *The Island City*, 1 Lowell, 375.

12. (Nov., 1876.) Libels or petitions against a vessel are heard by a court of admiralty in any order in which they are brought up. *The Fanny*, 2 Lowell, 508.

13. Until all libels and petitions have been heard, the proceeds are not distributed except to those who have an undoubted priority, such as seamen and salvors; and this not without notice to all others. One who obtains the first decree has no priority over others whose liens are in themselves of equal degree with his. *Ib.*

14. (Nov., 1830.) A right of action *in rem* by a material-man, for supplies furnished a vessel in her home port, which is lost by a neglect to prosecute within the time limited by the statute, may still be enforced against the surplus proceeds of the vessel in court. *The Stephen Allen*, 1 Blatchf. & H. Adm. 175.

15. This right to proceed against such surplus proceeds holds good where a party has a right to proceed in admiralty *in personam*, though not *in rem*, on the ground that the court has jurisdiction of the parties, and that the subject or fund is already under its control. *Ib.*

16. So a master who has a right to sue *in personam* for wages may proceed by summary petition against such surplus proceeds. *Ib.*

17. (April, 1846.) Whatever mode of procedure is pursued,

a party proved to be a mortgagee of a vessel, after admitting, in his answer to the original action, that the bottomry security is valid, and consenting to a decree of sale of the ship under it, cannot set up a title to the ship in himself as absolute owner and not mortgagee, in bar of the claim of the bottomry borrower to a share of the remnants remaining in court. *The Ship Panama*, Olc. Adm. 343.

18. In such collateral proceeding [for claim to surplus proceeds of the sale of a ship] the owner of the ship may defeat the claim of a mortgagee to such remnants by proof that the mortgage was given on an usurious consideration. *Ib.*

19. *Quære*, whether the court, in disposing of remnants in the registry, cannot take cognizance of other claims thereto, than those having a lien upon the vessel, or being of a maritime character. *Ib.*

20. (Aug., 1846.) *Quære*, whether the court can take cognizance of debts of the ship-owner which do not possess maritime privileges, and apply a distributive part of remnants in the registry to them. *Remnants in Court*, Olc. Adm. 382.

21. (April, 1868.) Where a libel was filed against a vessel to recover advances made in a foreign port, on request of the master, for the purpose of paying off a bottomry bond, and on the return of the process no owner appeared for her, but a mortgagee appeared, and, on his consent, the vessel was sold under a *venditioni exponas*, and the proceeds paid into court, and thereupon the mortgagee filed a claim and answer, not only joining issue with the allegations of the libel, but setting up his claim as mortgagee, and praying that his claim be paid out of the proceeds, which were insufficient to satisfy both claims,—*Held*, that the proceeding had been made one to effect the proper distribution of the proceeds of a vessel, already condemned and sold at the suit of the libellant, and it was, therefore, subject to the considerations which control courts of admiralty in the distribution of money in the registry. *The Bark Acme*, 2 Ben. 386.

22. (Dec., 1868.) Where a bark picked up, at sea, a derelict schooner, and, putting a crew on board of her, sent her to New York, where she was libeled for salvage, in the name of the master and owners of the bark, for the benefit of all concerned, and the amount of salvage decreed was, in pursuance of an order of court paid over to the libellant's proctor, and by him to the

owners, no order of distribution of the salvage having been entered, and subsequently one of the crew petitioned the court that the owners repay into court his share of the salvage, and the owners set up an assignment of the seaman's claim to them, which, it appeared, was executed in a foreign port, at the request of the master, and in ignorance of the facts as to the salvage suit; and also set up a release of the claim, executed by the seaman, after the return of the bark to New York, which was also executed in ignorance of the facts, — *Held*, that the payment of the money out of court, without an order of distribution, was an oversight, as well on the part of the court, as of the proctor; that the assignment and the release could not avail to deprive the sailor of his share in the salvage, and that a sufficient amount to pay him that share must be repaid by the owners into court. *The Schooner Edward Lee*, 3 Ben. 114.

23. (1856.) Under Rule 43 of admiralty practice, the party entitled to remnants or the surplus in court can only obtain it by petition or motion; and any one having an interest has a right to intervene *pro interesse suo*, whether his application involves the settlement of partnership accounts or not. *The L. B. Goldsmith*, Newb. Adm. 123.

24. When the admiralty has taken jurisdiction of the subject-matter, it will continue the exercise of the same until the remnants are appropriated. *Ib.*

Rule 44. — Reference to Commissioners.

In cases where the court shall deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners, to be appointed by the court to hear the parties and make report therein. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in reference to them, including the power to administer oaths to, and to examine, the parties and witnesses touching the premises.

1. (Feb., 1804.) The report of the assessors appointed by the court of admiralty to assess the damages ought to state the principles on which it is founded, and not a gross sum without explanation. *Murray v. Schooner Charming Betsy*, 2 Cranch, 64.

2. (Feb., 1809.) It is not necessary to take exceptions to the report of auditors, if the errors appear upon the face of the report. *Himely v. Rose*, 5 Cranch, 313.

3. (Dec., 1863.) Parties excepting to a report of a commissioner, in admiralty proceedings, should state, with reasonable precision, the grounds of their exceptions, with the mention of such other particulars, as will enable the court to ascertain, without unreasonable examination of the record, what the basis of the exception is. *Ex. gr.*: If the exception be that the commissioner received "improper and immaterial evidence," the exception should show what the evidence was. If that "he had no evidence to justify his report," it should set forth what evidence he did have. If that "he admitted the evidence of witnesses who were not competent," it should give their names, and specify why they were incompetent, what they swore to, and why their evidence ought to have been rejected. *Commander-in-Chief*, 1 Wall. 43.

4. (Sept., 1858.) Where a commission for the examination of witnesses confers the power to execute it upon any one of several commissioners, it may be executed by one of them. *The Griffin*, 4 Blatchf. 203.

5. (Oct., 1859.) On the hearing, on a libel *in personam*, the District Court heard sufficient evidence to show that the principal question was as to the amount due by the respondent, as owner of the vessel, to the libellant, as its master, for wages, and then, instead of taking further testimony in open court, referred it to a commissioner to take proofs as to the nature, extent, and value of the service, and as to credits for payments. *Held*, that the practice was proper, as not prejudicing the rights of the respondent, and saving the time of the court. *Shaw v. Collyer*, 4 Blatchf. 370.

6. (Sept., 1846.) The commissioner's report of damages, when parties have been fully heard before him with their proofs, and no question of law is involved in his decision, will be adopted by the court, unless palpable errors or inadvertencies have been committed by him. *The Steamboat Narragansett*, Olc. Adm. 388.

7. (Oct., 1846.) A common carrier by water is not liable for the loss of cargo by collision at sea; but if a commissioner reports damages for that cause, an exception will not lie to the

report to try the legality of the decision, it being a question on the merits. *The Steamboat New Jersey*, Olc. Adm. 444.

8. Relief must be had by motion to vacate the report as not within the scope of the order of reference, or for a rehearing before the court on the merits. *Ib.*

9. (July, 1847.) An objection to the regularity of a commissioner's report cannot be brought forward by exception to the report, but should be raised by motion founded upon the irregularity. *The Columbus*, Abb. Adm. 37.

10. An exception to a commissioner's report draws in question only the reasons upon which the report is founded. *Ib.*

11. (Aug., 1847.) Where, upon reference to a commissioner, there is a conflict of testimony upon a question of fact, the court will adopt the conclusion of the commissioner, unless there is a palpable preponderance of evidence against it. *Holmes v. Dodge*, Abb. Adm. 60.

12. As a general rule, a reference to a commissioner, in a suit for wages, is a regular and necessary step on the part of the libellant, incidental to the prosecution of the action, and cannot be the subject of an independent charge in a bill of costs. *Ib.*

13. Where, however, the reference is solely for the benefit of the respondent, the court will modify the order of reference so as to require the extra costs incurred to be defrayed by him. Such modification must be asked for on obtaining the order of reference. *Ib.*

14. (Jan., 1848.) The legality or propriety of an order of reference cannot be impeached upon exception to the report. *The Rhode Island*, Abb. Adm. 100.

15. (Jan., 1868.) The proceedings, on a reference to a commissioner to compute damages, are to be conducted in the usual manner in which they are conducted before a referee or a master in chancery. *The Ship E. C. Scranton*, 2 Ben. 81.

16. Where, on such a reference, the libellant was examined and partially cross-examined, and the libellant's counsel, claiming that the cross-examination had been closed, refused to produce the libellant for further cross-examination, and thereupon the claimants applied to the court for an order staying all proceedings before the commissioner until the libellant was so produced, but it did not appear that the matter had been in any way brought up before the commissioner, — *Held*, that where impor-

tant questions as to leading principles arise on a reference, it is proper practice for the commissioner to apply to the court for directions, but this is always to be done on his certificate; that where a commissioner is proceeding irregularly, or refuses to allow necessary testimony to be taken, it is proper to apply to the court, on a certificate from the commissioner as to his proceedings, for relief; that it is not proper to make such application to the court unless the question is one on which the commissioner has passed one way or another, or has refused to pass; that as there was here no certificate from the commissioner as to his proceedings, and it appeared that he had not passed upon the matter, the motion would be denied. *Ib.*

17. (April, 1870.) The propriety of the action of a commissioner, to whom it has been referred to ascertain the damages in a collision case, in refusing to allow a person to be sworn to contradict testimony previously given, cannot be raised by an exception to the report, but must be raised by an application to the court before the report is made. *The Ship E. C. Scranton*, 4 Ben. 127.

18. (May, 1870.) Objections to the admission of evidence before a commissioner cannot be raised by exception to his report. *The Schooner Transit*, 4 Ben. 138.

19. Where exception is taken to the method adopted by a commissioner in ascertaining the damages, either the report or the exception should show what such method was, or the exception will be unavailing. *Ib.*

20. (Nov., 1872.) The commissioner reported a certain sum for freight on the cargoes. The claimants excepted to the allowance of that amount, on the ground that no deduction had been made from the gross freight for the expenses of completing the voyage. *Held*, that as it did not appear from the report how the commissioner arrived at the sum which he allowed, or that he did not make the deduction referred to, the exception would not lie. The report should have been excepted to, as not stating the principle on which the sum was allowed, or a motion should have been made to send the report back for correction. *The Propeller Galatea*, 6 Ben. 260.

21. (Dec., 1876.) Objections taken to the rulings of a commissioner, as to the admission of evidence in the course of a reference to ascertain damages, may be brought up for review on

exceptions, after the report is made, or, if necessary, may be brought up on a certificate of the commissioner pending the reference. *The Brigantine Beaver*, 8 Ben. 594.

Rule 45.— Appeals.

All appeals from the District to the Circuit Court must be made while the court is sitting, or within such other period as shall be designated by the District Court by its general rules, or by an order specially made in the particular suit; or in case no such rule or order be made, then within thirty days from the rendering of the decree.

1. (Feb., 1807.) The *thing* does not follow the appeal into the Superior Court, but remains in the court below, which has a right to order it to be sold, if perishable, notwithstanding the appeal. *Jennings v. Carson*, 4 Cranch, 2.

2. (Feb., 1809.) In admiralty cases, an appeal suspends the sentence altogether; and the cause is to be heard in the appellate court as if no sentence had been pronounced. *Yeaton v. United States*, 5 Cranch, 281.

3. (Feb., 1810.) In all cases where the District Court of Maine acts as a *District* Court, the appeal is to the Circuit Court for the District of Massachusetts. *Sloop Sally v. United States*, 5 Cranch, 372.

4. (Jan., 1834.) The District Court decreed a salvage of one fifth of the gross proceeds of the sales of the goods and merchandizes, and directed the same to be sold accordingly. The salvage thus decreed was afterwards ascertained, upon the sales, to be, in the aggregate, two thousand seven hundred and twenty-eight dollars and thirty-eight cents; but no formal apportionment thereof was made. From this decree an appeal was interposed in behalf of all the owners of the goods and merchandizes, to the Circuit Court; but no appeal was interposed by the libellant. The consequence is, that the decree of the District Court is conclusive upon him as to the amount of salvage in his favor. He cannot in the appellate court claim anything beyond that amount, since he has not, by any appeal on his part, controverted its sufficiency. *Stratton v. Jarvis*, 8 Pet. 4.

5. Although no apportionment of the salvage among the various claimants was formally directed to be made by any interlocu-

tory order of the District Court, an apportionment appears to have been in fact made under its authority. A schedule is found in the record, containing the names of all the owners and claimants, the gross sales of their property, and the amount of salvage apportioned upon each of them respectively. By this schedule the highest salvage chargeable on any distinct claimant is nine hundred and six dollars and seventeen cents, and the lowest forty-seven dollars and sixty cents, the latter sum being below the amount for which an appeal, by the act of 3rd of March, 1803, ch. 93, is allowed from a decree of the District Court in admiralty and maritime causes. *Ib.*

6. (Dec., 1851.) The surety for the appellants from a decree in admiralty gave bond to pay all costs and damages which might be adjudged by this court. This court having affirmed the decree of the Circuit Court, with costs, and six per cent damages, judgment was entered, upon the receipt of the mandate, by the Circuit Court, for the amount of the original judgment, together with the amount of costs and damages calculated up to that day; and execution was awarded. Under this execution, the vessel, which had been attached under the libel, was sold for less than this aggregate amount. The surety is not entitled to have a relative proportion of the proceeds of sale applied to the reduction of his bond, but is responsible upon it to the entire amount. *Ives v. Merchants' Bank*, 12 How. 159.

7. (Oct., 1874.) In a proceeding *in rem*, a valid seizure and actual control of the *res* by the marshal gives jurisdiction; and an improper removal of it from his custody, as by an order of court improvidently made, does not destroy the jurisdiction. Hence, where, on a libel *in rem* in the admiralty, for repairs, a vessel had been seized, and, on hearing, the libel was dismissed, but on the same day an appeal to the Circuit Court was moved and allowed, a motion made on the next day by the claimants, and improvidently granted, to restore the vessel to them, does not divest the Circuit Court of its jurisdiction to hear the appeal, if within due time the appeal is perfected by giving bonds in the way prescribed by statute. *The Rio Grande*, 23 Wall. 458.

8. (Oct., 1813.) On an appeal to the Circuit Court, the property follows the appeal into that court. *The Grotius*, 1 Gall. 503.

9. The District Court has no authority, after an appeal, to bail or sell the property. *Ib.*

10. (Nov., 1828.) An appeal lies from a decree of the District Court, refusing an order for the sale of a vessel on an application by one of two part owners who have an equal interest. *Davis & Brooks v. The Brig Seneca*, Gilp. 34.

11. After an appeal, a vessel which was the subject of the decree of the District Court, passes into the custody of the Circuit Court, and is no longer under the control of the former tribunal. *Id.*

12. (Nov., 1836.) Where a libel claims \$300 damages, and a decree is given in favor of the libellant for \$40, in which he acquiesces, the respondent cannot appeal to the Circuit Court. *Greigg v. Reade*, Crabbe, 64.

Rule 46.—Practice. Admiralty.

In all cases not provided for by the foregoing rules, the District and Circuit Courts are to regulate the practice of the said courts respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

1. (Feb., 1807.) By the Judiciary Act the District Courts are also courts of admiralty, and no law has regulated their practice, yet they proceed according to the general rules of the admiralty. *Jennings v. Carson*, 4 Cranch, 24.

2. (Feb., 1818.) Informal and imperfect proceedings in the District Court corrected and explained in the Circuit Court. *The Freundschaft*, 3 Wheat. 14.

3. (Feb., 1825.) Under the Process Act of 1792, c. 137 [xxxvi.], s. 2, the proceedings in cases of admiralty and maritime jurisdiction, in the courts of the United States, are to be according to the modified admiralty practice in our own country, engrafted upon the British practice; and it is not a sufficient reason for rejecting a particular process, which has been constantly used in the admiralty courts of this country, that it has fallen into desuetude in England. *Manro v. Almeida*, 10 Wheat. 473.

4. (Oct., 1872.) The admiralty rules established by the Supreme Court are rules of practice, not of decision. *The Selt*, 3 Biss. 344.

5. (Oct., 1837.) The distinction between plenary and sum-

mary causes has not been adopted in the practice of the admiralty in this country. *Pratt v. Thomas*, 1 Ware, 437.

6. (March, 1877.) The note of a third person, given as security for supplies to a ship, must be produced in court when a decree for the price is made against the ship, and the amount realized from the decree must be indorsed on the note. *The Sarah J. Weed*, 2 Lowell, 555.

7. (Feb., 1830.) The practice of calling in seafaring men to assist the judgment of the court has never been sanctioned in this country. *The Waterloo*, 1 Blatchf. & H. Adm. 114.

8. (Sept., 1830.) The court will not allow its recollections or impressions of verbal consents and understandings between counsel, not entered in its minutes, to interfere with or control the rights of the parties. *The Martha*, 1 Blatchf. & H. Adm. 151.

9. (Jan., 1846.) *Quære*, whether an appeal to the judge lies from an order of a commissioner or justice of the peace granting certificates of cause for admiralty process, under the act of 1790. *The Schooner Eagle*, Olc. Adm. 232.

10. But the judge or court may stay proceedings, or act upon the petition *de novo*. *Ib.*

11. (Jan., 1846.) On a motion to show cause why an attachment should not issue against the parties for the payment of costs, or for other proper relief, the remedy is to be governed by the rules of the Supreme Court of the United States, or of this court, if any apply to it; and if not, then, "according to the principles, rules, and usages which belong to courts of admiralty, as contradistinguished from courts of common law." *The Steamboat Delaware*, Olc. Adm. 240.

12. (July, 1848.) An irregularity of practice must be objected to by the party affected by it, within the term of the court next subsequent to its becoming known to him. *The Infanta*, Abb. Adm. 327.

13. (Feb., 1873.) The admiralty creates its own forms of proceeding. *The Steam Propeller Epsilon*, 6 Ben. 378.

14. Where the Supreme Court has not by its Rules provided for modes of proceeding, the District Courts have the power and are bound to devise modes of proceeding which shall enable them to carry into effectual execution any law which they are called to administer. *Ib.*

15. (Aug., 1834.) Where courts of a state of the United

States have concurrent jurisdiction, the mode of trial is to be regulated according to the law, usage, and practice of that court in which the suit may be instituted. *Davis v. A New Brig*, Gilp. 473.

16. Where a lien on a vessel is given by a state law, the District Court rightfully obtains jurisdiction, and may exercise it, not according to the provisions of the state law, but according to the mode of proceeding in the admiralty. *Ib.*

17. Workmen and material-men having a lien on a vessel, under the provisions of a state law, have their election to enforce it either in the District Court or a state court; but having made their election, the defendant must follow them into the court chosen, and submit to the mode of proceeding and trial used in that court. *Ib.*

18. (Nov., 1836.) Where a legal point arose and the counsel for one of the parties asked time for preparation to argue it, but it appeared that such counsel had previous notice that the point would then arise, the court refused the application. *Greigg v. Reade*, Crabbe, 64.

19. (May, 1841.) When a case comes rightfully into a court of admiralty, it is to be conducted, tried, and decided according to the usage and practice of that court. *Boon v. The Hornet*, Crabbe, 426.

20. (1856.) A rule of practice established by virtue of an act of Congress has the force of a statute. *Scott v. The Propeller Young America*, Newb. Adm. 107.

Rule 47. — Bail. Imprisonment.

In all suits *in personam*, where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the State where an arrest is made upon similar or analogous process issuing from the State courts.

And imprisonment for debt, on process issuing out of the admiralty court, is abolished in all cases where, by the laws of the State in which the court is held, imprisonment for debt has been, or shall be hereafter, abolished, upon similar or analogous process issuing from a State court.

Rule 48. — Limiting Rule 27.

The twenty-seventh rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the District Court shall be of opinion that the proceedings prescribed by that rule are necessary for the purposes of justice in the case before the court.

All rules and parts of rules heretofore adopted, inconsistent with this order, are hereby repealed and annulled.

Rule 49. — Further Proof in Circuit Court.

Further proof, taken in a Circuit Court upon an admiralty appeal, shall be by deposition, taken before some commissioner appointed by a Circuit Court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of September, 1789, upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such depositions upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the magistrate before whom it is to be taken, or from the clerk of the court in which such appeal shall be pending, to the adverse party, to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party or his attorney, allowing time for their attendance after being notified not less than twenty-four hours, and, in addition thereto, one day, Sundays exclusive, for every twenty miles' travel; provided, that the court in which such appeal may be pending, or either of the judges thereof, may, upon motion, increase or diminish the length of notice above required.

1. (1805.) New evidence is admissible on appeal, and time given to produce it, on proof that appellant was chargeable with no laches in not producing it in the court below. *Rose v. Himely*, Bee, Adm. 313.

Rule 50. — Evidence transmitted to Circuit Court.

When oral evidence shall be taken down by the clerk of the District Court, pursuant to the above-mentioned section of the act of Congress,

and shall be transmitted to the Circuit Court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect.

Rule 51. — Replication not allowed.

When the defendant, in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be allowed. But within such time after the answer is filed as shall be fixed by the District Court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain or add to, the new matters set forth in the answer; and within such time as may be fixed, in like manner, the defendant shall answer such amendments.

1. (May, 1835.) In admiralty pleadings, the better practice is, to present new facts, when necessary, by an amendment to the libel and answer, as in chancery, and not by way of replication and rejoinder. *Brig Sarah Ann*, 2 Sumn. 206.

2. (May, 1844.) A special replication by the libellant, under oath, is not admissible, unless it be demanded by the respondents, or ordered by the court; and then it is in the nature of a cross-bill or *reconventio* of the Civil Law. *Coffin v. Jenkins*, 3 Story, 109.

3. (March, 1844.) Where the libellant intends merely to deny the truth of the allegations in the answer, a supplemental libel in replication is not necessary. But when the allegations of the answer are intended to be avoided by new facts, the matter in avoidance should be put upon the record. *Gladding v. Constant*, 1 Sprague, 73.

4. (Jan., 1856.) A replication merely denying the truth of the answer is not required in this district; but where the libellant relies on new matter in avoidance, he should put it on the record by a supplemental libel, to which the respondents should answer. *Taber v. Jenny*, 1 Sprague, 315.

5. (Sept., 1833.) In admiralty practice, in the absence of any specific rule regulating the proceeding, a replication¹ is necessary to put in issue the facts set up by a sworn answer. *The Mary Jane*, 1 Blatchf. & H. Adm. 390.

¹ See Rule 51.

6. If no replication¹ is filed, the libellant will be taken to have admitted the truth of the answer. *Ib.*

7. The method of procedure in the English admiralty, in matters of practice, and its origin and forms, considered. *Ib.*

8. New rule promulgated in regard to replications.¹ *Ib.*

Rule 52. — Record on Appeal.

The clerks of the District Courts shall make up the records to be transmitted to the Circuit Courts on appeals, so that the same shall contain the following :—

1. The style of the court.

2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.

3. If bail was taken, or property was attached or arrested, the process of the arrest or attachment and the service thereof; all bail and stipulations; and, if any sale has been made, the orders, warrants, and reports relating thereto.

4. The libel, with exhibits annexed thereto.

5. The pleadings of the defendant, with the exhibits annexed thereto.

6. The testimony on the part of the libellant, and any exhibits not annexed to the libel.

7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.

8. Any order of the court to which exception was made.

9. Any report of an assessor or assessors, if excepted to, with the orders of the court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.

10. The final decree.

11. The prayer for an appeal, and the action of the District Court thereon; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted :—

1. The continuances.

2. All motions, rules, and orders not excepted to which are merely preparatory for trial.

3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception

¹ See Rule 51.

to a deposition in the District Court was founded on some one or more of these ; in which case, so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness, and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to ; and, in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

The clerk of the District Court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of the record of the District Court in the cause named at the beginning of the copy made up pursuant to this rule ; and no other certificate of the record shall be needful or inserted.

4. Hereafter, in making up the record to be transmitted to the Circuit Court on appeal, the clerk of the District Court shall omit therefrom any of the pleading, testimony, or exhibits which the parties by their proctors shall by written stipulation agree may be omitted ; and such stipulation shall be certified up with the record.

Rule 53.—Cross-Libel. Security.

Whenever a cross-libel is filed upon any counter-claim, arising out of the same cause of action for which the original libel was filed, the respondents in the cross-libel shall give security in the usual amount and form, to respond in damages, as claimed in said cross-libel, unless the court, on cause shown, shall otherwise direct ; and all proceedings upon the original libel shall be stayed until such security shall be given.

1. (Dec., 1858.) Where a libel was filed by the owners of a steamer, against the owners of a propeller, for a collision, and there was an agreement between the parties in the court below, that the answer of the respondents should operate as a cross-libel, the mode of proceeding does not meet the approval of this court, and ought not to be drawn into precedent. The respondents should file their cross-libel, take out process, and have it served in the usual way. *Ward v. Chamberlain*, 21 How. 572.

2. (Oct., 1853.) The defendants in an admiralty suit, who have suffered from a collision and are in no fault themselves, may, by a cross-libel, set up the damage they have sustained,

and will be entitled to a decree in their favor for compensation. *Ward v. The Ogdensburgh*, 5 McLean, 623.

3. (Nov., 1876.) A tug was libeled for negligence, and purchased after the cause of action had accrued. *Held*, that the former owners might file a cross-libel under the 53rd Rule, and have proceedings stayed until respondent in the cross-libel gave security to answer the demand. *The George H. Parker*, 1 Flipp. 606.

4. A cross-libellant should act with promptness. A motion for security made on the eve of trial, and after the witnesses have been summoned, and the case is ready to proceed, comes too late. *Ib.*

5. (June, 1857.) Where, in a libel by a ship-owner, for demurrage under a charter-party, the hirer set up in defense a neglect of duty by the ship-owner, under the same contract, not by way of recoupment, but merely to repel the claim for demurrage,—*Held*, that the hirer might afterwards maintain a cross-libel for damages sustained by such neglect. *Nichols v. Tremlett*, 1 Sprague, 362.

6. He might have availed himself of this claim for damages by way of recoupment in the first suit. But if he had done so, he could not have had a decree for any excess of his damages over the claim of the libellant; nor could he have sustained a cross-libel for such excess. *Ib.*

7. He may elect whether to take his remedy wholly in defense, or wholly by suit. *Ib.*

8. Where such cross-suit was instituted, and the libellant in the first suit was out of the jurisdiction, notice on his counsel and proctor in that suit is not a sufficient service of the cross-libel. *Ib.*

9. But the court may, in its discretion, stay proceedings in the first suit until an appearance shall be entered, and other steps taken in the second. *Ib.*

10. Under the circumstances, such stay was ordered. *Ib.*

11. (Oct., 1853.) When, by consent of parties, the answer of the respondent stands as a cross-libel, the court may, if a proper case is made, decree full damages for the respondent against the libellant. *Ward v. The Propeller Ogdensburgh*, Newb. Adm. 140.

12. (March, 1873.) Rule 53 in admiralty, requiring the respondents in a cross-libel to give security to respond in damages

as claimed in the cross-libel, applies as well to actions *in rem* as to those *in personam*. *The Toledo*, 1 Brown, 455.

Supplementary Rules of Practice in Admiralty, under the Act of March 3, 1851, entitled "An Act to limit the Liability of Ship-owners, and for Other Purposes."

Rule 54. — Libel or Petition for Limitation of Liability of Ship-owners.

When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture done, occasioned, or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the said act above recited, the said owner or owners shall and may file a libel or petition in the proper district court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation, with sureties, for payment thereof into court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice served through the post-office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application of

the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

1. (Dec., 1871.) The District Court, sitting as a court of admiralty, has jurisdiction of cases arising under the act [of 1851, limiting the liability of ship-owners], and may administer the law as provided in the fourth section. *Norwich Co. v. Wright*, 13 Wall. 104.

2. The proper course of proceeding in admiralty [under the act of March 3, 1851, limiting the liability of ship-owners], pointed out. *Ib.*

3. (Oct., 1880.) *Semble* that the stipulation, on filing the petition for limited liability, should be for the value of the ship after the collision, with the addition thereto of the freight then pending, it not appearing that her value was subsequently diminished. *The Benefactor*, 13 Otto, 239.

4. (Oct., 1881.) The owner of a vessel may, before he or it is sued, institute appropriate proceedings in a court of competent jurisdiction, to obtain the benefit of the limitation of liability provided for by secs. 4284, 4285 of the Revised Statutes. *Ex parte Slayton*, 15 Otto, 451.

5. (Dec., 1866.) A steamer bound from New London to New York met with a collision, from the effects of which she sunk. She was afterwards raised and repaired, and was then libeled by a freighter to recover \$8,000 damages for loss of his goods on board. The vessel being in custody in the action, the claimants filed a petition claiming that the liability of the owners was limited to the value of the vessel and her freight, according to the act of Congress of March 3, 1851, entitled "An act to limit the liability of ship-owners." They alleged that the amount of losses exceeded the value of the vessel and freight, and that there was reason to anticipate actions against her to recover amounts exceeding her value, and prayed the court for leave to file a stipulation in the appraised value of the vessel and freight, for the benefit of all persons entitled to liens upon her for losses occasioned by the collision; and that on filing of that stipulation the vessel and also her owners might be declared to be discharged from all liability for losses arising out of the collision.

The court directed notice to be published, for fourteen days, of

the time and place of making the application for the order on the petition. Other libellants, having claims in all to the amount of \$30,000, appeared, and opposed the application. *Held*, that the act of 1851 does not authorize the discharging the vessel from the liens created by law, on giving the stipulation tendered; although it declares a limitation of the liability of the owners of ships, it nowhere undertakes to modify the law which creates a lien upon the ship for cargo lost, or undertakes to regulate or limit the liability of the vessel for such losses, or in any way provides for the enforcement or discharge of that liability, or for the taking of any sort of bond or stipulation for that purpose. *Place v. The Steamboat City of Norwich*, 1 Ben. 89.

6. That the provision in the fourth section of that act, authorizing the owners to take "appropriate proceedings" for the purpose of apportioning the sum for which the ship-owners may be liable among the parties entitled thereto, does not warrant this application. *Ib.*

7. That the discharge of the vessel from the liens created by law, as asked for in the petition, could not be obtained by virtue of the act of 1851. *Ib.*

8. That a court of admiralty cannot under that act, in an action *in rem* against the vessel alone by a single freighter, make, upon a petition, a summary order declaring the owners of the vessel free from personal liability to any freighter on filing a stipulation as proposed. Such an order would be neither an assignment of the vessel to a trustee for the benefit of the persons having claims for losses, nor "appropriate proceedings in any court to apportion the sum for which the owners may be liable, among the parties entitled thereto," which are the only forms of proceeding authorized by the act. *Ib.*

9. That such "appropriate proceeding" must be a proceeding *in personam*, where the parties to be affected are duly brought before the court, and in which a trial can be had on issues properly framed. *Ib.*

10. That such a proceeding would not be within the jurisdiction of an admiralty court. (Cootes' Pr. 9; *The Saracen*, 6 Moore, 74.) *Ib.*

11. That the English authorities cited have reference to the English act, which expressly gives to the admiralty court, in such cases, the jurisdiction exercised by the Court of Chancery. *Ib.*

12. That the relief sought for the vessel and her owners could not therefore be afforded under any of the provisions of the act of 1851. *Ib.*

13. But that the application might be treated as one for a release of the vessel on bail, addressed to the ordinary discretion of the court. *Ib.*

14. That the power to release property from arrest on bail does not depend on any statute, but is one of the inherent powers of the court. (*The Alligator*, 1 Gall. 147.) *Ib.*

15. That under the circumstances of the present case, a stipulation in the form tendered would protect all the rights of the lien creditors, and as effectually release the vessel from all the liens provided for in it, as the ordinary stipulation does from the claims made in the particular libel, which that stipulation is intended to secure. *Ib.*

16. That therefore the application to bond the vessel in this way might be granted. *Ib.*

17. (Feb., 1870.) A libel was filed against the steamer Bristol to recover damages for a collision between her and the bark George S. Brown. The owners of the Bristol filed a cross-libel against the bark to recover the damages sustained by the steamer, and moved, on notice to the proctors for the libellant in the suit against the steamer, to stay proceedings in that suit until security was given on the cross-libel. No process had been issued on the cross-libel. *Held*, that the Supreme Court did not intend, by the 54th Rule in Admiralty, to give this court jurisdiction of the second libel without a seizure of the bark within the district; that the object of the 54th Rule is to compel the appearance and giving of security by a respondent in a cross-libel *in personam*, in cases where it does not appear proper that he should be relieved from giving such security. *The Steamer Bristol*, 4 Ben. 55.

18. (June, 1872.) A steam propeller, running between Providence and New York, was burned at her dock in New York, on May 24, 1868, with a valuable cargo on board. Portions of the cargo were saved, but not in a condition to be delivered. The wreck of the vessel was sold for \$5,000. Various shippers' of cargo on board the vessel commenced suits against the corporation which owned her, to recover for the loss of their goods. These suits were pending in the courts of the states of New York, Rhode Island, and Massachusetts. In 1872 the owners

of the steam propeller filed a libel and petition in this court, under the 55th, 56th, 57th, and 58th Admiralty Rules of the Supreme Court, for the purpose of obtaining the benefit of the limited liability given by the act of March 3, 1851 (9 Stat. 635). On the filing of the petition, the court made an order directing that an appraisement of the value of the interest of the petitioners, in the vessel and her freight, be made by the clerk, on proofs to be presented to him, and on hearing the petitioners and such of the parties as had begun suit in this district; and that notice of the hearing be given to the attorneys of such parties, and that, in the mean time, the said parties and their attorneys be enjoined from the further prosecution of those suits. One of those parties moved to set aside the order. *Held*, that the proceeding thus instituted is a matter of exclusive admiralty jurisdiction. It is substantially a suit *in rem* against the vessel and its pending freight. *The Providence & New York Steamship Co.*, 6 Ben. 124.

19. (Jan., 1873.) A collision occurred between a steamboat and a schooner, by which both vessels were sunk. The steamboat was raised by her owners and repaired, after which various suits were brought against her in this court in admiralty, to recover damages for such collision. Those suits were consolidated, and, by order of the court, one stipulation for value of the steamboat was given in all. Subsequently her owners filed this petition, for the purpose of obtaining the benefit of the act of March 3, 1851 (9 Stat. 635), limiting the liability of the ship-owners, praying an appraisement of the value of the petitioners' interest in the steamboat and her freight, for that purpose. Objection was made on behalf of the parties who had claims against her. *Held*, that it was not necessary to the jurisdiction of the court over this matter, that the court should have possession of the vessel or her proceeds, or of a fund representing the proceeds, over which the court had already obtained control, through the exercise of its ordinary jurisdiction; that the pendency of the suits against the vessel, and the existence of the stipulation for value given in those suits, afforded no reason why this proceeding should not be taken, and that the petitioners were entitled to the order directing the appraisement as prayed for. *The Steamboat City of Norwich*, 6 Ben. 330.

20. A proceeding to obtain the benefit of the act in question

is not an action *in rem*, but is a proceeding *sui generis*, which partakes rather of the character of a suit *in personam*. *Ib.*

21. (Feb., 1873.) The act of March 3, 1851 (9 Stat. 635), limits the liability of the owner of a ship for injuries to persons, as it limits such liability for injuries to property. *The Steam Propeller Epsilon*, 6 Ben. 378.

22. Notwithstanding the language of the fourth section of the act, it can be carried into effect by a court of admiralty. *Ib.*

23. In case the fund provided for by the act is insufficient to satisfy the demands against it, the claimants on the fund must share *pro rata*. *Ib.*

24. (Feb., 1877.) Where the owners of a steamship filed a petition, under sec. 4283 of the Revised Statutes, to obtain a limitation of their liability by reason of a certain collision, after their steamer had been proceeded against in an action *in rem* and released from custody upon their stipulation in her full value given for the benefit of all persons who might have demands arising out of said collision, and after a final hearing had been had in such action and a decree entered upon such stipulation,—*Held*, that notwithstanding the vessel had been released upon a stipulation in her full value for the benefit of all who might have demands arising out of the collision, the proceeding for a limitation of liability was not vain or fruitless. *Petition of the New York & Wilmington Steamship Co.*, 9 Ben. 44.

25. *Held*, also, that the right to take proceedings to obtain a limitation of liability was not impaired by giving, in an action *in rem*, a stipulation in the full value of the vessel for the benefit of all who might have demands arising out of the same collision. *Ib.*

26. *Held*, further, that the right to resort to proceedings by petition to attain a limitation of liability cannot be exercised after a final hearing has been had and a final decree entered, in an action *in rem* brought to recover the claims against which relief is sought by the petition. *Ib.*

27. (March, 1878.) Where the defendant, answering to the merits, by his answer also offered to surrender his vessel to the libellants, and upon the trial tendered a written surrender of his interest in the vessel as of the date of the collision, *i. e.*, March 25, 1876,—*Held*, that the surrender of his interest, as tendered in the answer and upon the trial, was in such form and in such

time as, under the maritime law, to effect his release from liability to the libellants. *Thomassen v. Whitwell*, 9 Ben. 403.

28. (April, 1878.) A party seeking to take advantage of the statutes of the United States limiting the liability of ship-owners, cannot do so by answer. The proper method is to institute an independent proceeding under the General Admiralty Rules of 1872 (Rules 55, 56, 57, 58). *Thomassen v. Whitwell*, 9 Ben. 458.

29. It is not necessary to obtain leave of the court to institute the proceeding required by the Admiralty Rules, under the statute providing for limitation of liability. *Ib.*

30. (June, 1878.) A collision occurred between two schooners, the S. and the A. T., on May 6, 1878. On June 11, 1878, the owners of the S. filed a libel against the A. T. to recover their damages. The A. T. had been in the mean time repaired. A reference was had to fix her value, and the commissioner reported that her value after the collision was \$500, and that the interest of the owners in her pending freight was \$139.25, and the owners of the S. excepted to the report. *Held*, that the value to which the liability of the owners of the A. T. would be limited was the value of the vessel after the collision and before she was repaired; that as the vessel was sailed on shares by a master who was not an owner, the interest of the owners in the freight was one half of it after deducting port charges, which the commissioner had reported; and that the exceptions must be overruled. *Petition of Wright*, 10 Ben. 14.

31. (June, 1879.) An English steamship, the J. B., loaded with guns and munitions of war for the Turkish government, and bound from New Haven to Constantinople, went ashore on Little Gull Island at the mouth of Long Island Sound, and became a total loss. Some wreckage was saved from the vessel, and most part of the cargo, which went back damaged to the consignors. The owners of the vessel, no action for damages having been begun within six months, made petition for limitation of their liability to the value of the vessel and freight, offering tender of the vessel and her wreckage in their hands. An order was thereupon issued by the court directing all parties interested to appear and show cause why an appraisement of the vessel should not be ordered, and why the petitioners should not have the relief which they asked. Notice of the order to

show cause was published, and on the return-day some of the consignors and the insurers appeared specially to oppose the petition, and objecting to jurisdiction.

Held, that the ship-owners were not entitled to the benefit of the rule of the general maritime law limiting the liability of the ship-owners to value of the vessel and freight, but were entitled to the benefit of the statute of the United States (Rev. Stat. secs. 4283, 4284), though no action was in this case yet instituted against the ship *in rem* or the owners *in personam*, to recover for the losses caused by the stranding; and that the court had jurisdiction of the proceeding;

That, the stranding having occurred within the territorial limits of this district, within which also the wreckage is, and no suit having been instituted in any other district, this proceeding was properly instituted in this court;

That the libel should be amended so as to show the residence of the libellants, whether this be considered a proceeding *in rem* or *in personam*, under Admiralty Rule 23, but could not be held defective because it asked alternative relief, in a case like this;

That the tender, made in the libel, of the vessel and wreckage, to be disposed of by the court, was an abandonment such as the law requires;

That the court had power under the statute and the Rules of the Supreme Court to direct the marshal to take property into his custody; whether it had power to order a sale by the court, *quære*. *The Steamship John Bramall*, 10 Ben. 495.

Rule 55. — Proof of Claims.

Proof of all claims which shall be presented in pursuance of said monition shall be made before a commissioner, to be designated by the court, subject to the right of any person interested to question or controvert the same; and, upon the completion of said proofs, the commissioner shall make report of the claims so proven, and upon confirmation of said report, after hearing any exceptions thereto, the moneys paid or secured to be paid into court as aforesaid, or the proceeds of said ship or vessel and freight (after payment of costs and expenses), shall be divided *pro rata* amongst the several claimants, in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

Rule 56. — Contest of Liability.

In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel for said embezzlement, loss, destruction, damage, or injury (independently of the limitation of liability claimed under said act), provided that, in his or their libel or petition, he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have presented his or their claim to the commissioner under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability under the said act of Congress, or both.

1. (Oct., 1880.) A ship-owner who, on the trial of the issue as to the cause of collision, contests all liability whatever, is not thereby precluded from claiming the benefit of the limitation of liability provided by sec. 4283 of the Revised Statutes. *The Benefactor*, 13 Otto, 239.

2. Proceedings for a limitation of liability, if not instituted until after a party has obtained satisfaction of his demand, are ineffectual as to him. A return of the money should not be compelled, nor, in general, should relief be granted, except upon condition of compensating the party for any costs and expenses to which he may have been subjected by reason of the delay of the ship-owner in claiming the benefit of the statute. *Ib.*

Rule 57. — Libel or Petition, in what Court to be Filed.

The said libel or petition shall be filed and the said proceedings had in any District Court of the United States in which said ship or vessel may be libeled to answer for any such embezzlement, loss, destruction, damage, or injury; or, if the said ship or vessel be not libeled, then in the District Court for any district in which the said owner or owners may be sued in that behalf. If the ship have already been libeled and sold, the proceeds shall represent the same for the purposes of these rules.

1. (Nov., 1872.) The owners of a vessel destroyed by fire filed a petition under the act of 1851, limiting the liability of

owners (9 Stat. 635), and obtained an injunction restraining the prosecution of suits which had been commenced against them by owners of cargo on board. The plaintiffs in one of those suits, without having presented their claims to the commissioner, as required by the 57th Rule in Admiralty of the Supreme Court, filed a paper called "exceptions and answer," seeking by it to contest the right of the owners of the vessel to exemption or limitation of liability. *Held*, that this could not be done, but that the exception might stand as an exception to the jurisdiction of the court to enjoin the parties. *The Steamship Oceanus*, 6 Ben. 258.

Rule 58.—Proceedings in Circuit Courts for Limitation of Liability.

All the preceding rules and regulations for proceeding in cases where the owner or owners of a ship or vessel shall desire to claim the benefit of limitation of liability provided for in the act of Congress in that behalf, shall apply to the Circuit Courts of the United States where such cases are or shall be pending in said courts upon appeal from the District Courts.

Rule 59.—Petition by Claimant or Respondent for Proceedings against Other Vessels or Parties, in Collision Cases.

In a suit for damage by collision, if the claimant of any vessel proceeded against, or any respondent proceeded against *in personam*, shall, by petition, on oath, presented before or at the time of answering the libel, or within such further time as the court may allow, and containing suitable allegations showing fault or negligence in any other vessel contributing to the same collision, and the particulars thereof, and that such other vessel or any other party ought to be proceeded against in the same suit for such damage, pray that process be issued against such vessel or party to that end, such process may be issued, and, if duly served, such suit shall proceed as if such vessel or party had been originally proceeded against; the other parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation, with sufficient sureties, to pay to the libellant and to any claimant or new party brought in by virtue of such process, all such costs, dam-

ages, and expenses as shall be awarded against the petitioner by the court upon the final decree, whether rendered in the original or appellate court; and any such claimant or new party shall give the same bonds or stipulations which are required in like cases from parties brought in under process issued on the prayer of a libellant.

Affidavit.

1. (Nov., 1845.) Courts of law, as a general rule, require affidavits to the merits of a cause to be made by the parties to the action, where a question of diligence or good faith is involved; but the rule is not inflexible, and the deposition of the attorney, upon good cause shown, is sufficient. *The Brig Harriet*, Olc. Adm. 222.

2. The strict rules of the common law are not applicable to admiralty practice. The proctor is, in many cases in point of fact, *dominus litis*, clothed with all the authority of the party himself. *Ib.*

3. Without regard to that distinction, courts proceeding according to the civil law admit proctors to exercise all the functions of attorneys at law. *Ib.*

Appearance.

1. (Feb., 1795.) The want of a monition to appear is cured by actual appearance. *Penhallow v. Doane*, 3 Dall. 87.

2. (Aug., 1796.) The libel was filed by the British consul, on behalf of Walter Ross, against Hills, May, and Woodbridge (who formed a partnership in Charleston, under that firm) and John Miller. The plea was headed, "the plea of Ebenezer Hills, one of the company of Hills, May, and Woodbridge, in behalf of himself and his said copartners, who are made defendants in the libel of Walter Ross;" and concluded with praying, "on the behalf aforesaid to be dismissed, as far as respects the said Hills, May, and Woodbridge." The replication regarded the plea of Hills as the plea of all the company; and the rejoinder was signed by "Joseph Clay, junior, proctor for the defendants." On the 11th of August the Chief Justice delivered the opinion of the court that, in the present case, there was a sufficient legal appearance of all the defendants. *Hills v. Ross*, 3 Dall. 331, 332.

3. (Oct., 1873.) An entry on the record of an admiralty case, that, on the return of a process of attachment, Mr. B. "appears for the respondent, and has a week to perfect an appearance and to answer," is an appearance, the entry being followed by the execution by the respondent or his agents of different bonds, reciting "that an appearance in the case had been entered." *Atkins v. Disintegrating Co.*, 18 Wall. 272.

Contempt.

1. (1790.) Judgment, that Jonas Holmstedt [the captain of a Swedish vessel] has been guilty of a contempt, in refusing to obey the process of the court, and in confining in irons a suitor while under the protection of the laws and applying for the justice of the country; for which offense I award that he pay a fine of twenty dollars, with the costs of prosecution, and stand committed until the sentence is complied with. *Weiberg & Casterius v. The Brig St. Oloff*, 2 Pet. Adm. 434.

Costs.

1. (Jan., 1827.) No judgment or decree can be rendered directly against the United States for costs and expenses. *The Antelope*, 12 Wheat. 546.

2. The fees and compensation to the marshal, where the government is a party to the suit, and his fees or compensation are chargeable to the United States, are to be paid out of the treasury, upon a certificate of the amount, to be made by the court, or one of the judges. *Ib.*

3. (Jan., 1839.) The allowance of costs is a matter of practice which need not be a part of the decree or judgment of the court, although it often is so; as the payment of costs is, in most cases, made to depend upon the rules; and when rules do not apply, upon the court's order in directing the taxation of costs. *Story v. Livingston*, 13 Pet. 359.

4. (Jan., 1844.) Costs in the admiralty are in the sound discretion of the court; and no appellate court should interfere with that discretion, unless under peculiar circumstances. *United States v. Brig Malek Adhel*, 2 How. 210.

5. Although not *per se* the proper subject of an appeal, yet they can be taken notice of incidentally, as connected with the principal decree. *Ib.*

6. In the present case, as the innocence of the owners was established, it was proper to throw the costs upon the vessel, which was condemned, to the exclusion of the cargo, which was liberated. *Ib.*

7. (Dec., 1869.) Courts of admiralty cannot properly allow counsel fees to the counsel of a gaining side, in admiralty, as an incident to the judgment, beyond the costs and fees allowed by statute. Under the statute now regulating the fees of attorneys, solicitors, and proctors (the statute, namely, of 26th February, 1853, 10 Stat. at Large, 161), a docket fee of twenty dollars may be taxed, on a final hearing in admiralty, if the libellant recover fifty dollars, but if he recovers less than fifty dollars, only ten. *The Baltimore*, 8 Wall. 378.

8. (Oct., 1873.) The matter of costs in admiralty are wholly under the control of the court giving them. *The Sapphire*, 18 Wall. 51.

9. (Oct., 1814.) Practice as to costs and charges, where several parties intervene for separate interests. *The Louisetta*, 2 Gall. 307.

10. (May, 1815.) Practice, as to taxation of costs, in case of a claim on proceeds, where other parties are interested. *The Jerusalem*, 2 Catara, 2 Gall. 345.

11. (May, 1815.) In a case like this, of a claim on proceeds in the custody of the court, nothing can be allowed beyond that for which there is a specific lien, and the actual charges of court. No attorney's fee can be allowed. *The Jerusalem*, 2 Gall. 350.

12. (Nov., 1819.) Custody fees will, in the first instance, be paid out of the proceeds in court, on application of the party entitled to them. But in cases of condemnation they are chargeable on the claimant, as a part of the taxable costs. *Brig Langdon Cheves*, 2 Mason, 58.

13. (May, 1839.) In salvage cases, the general rule is to decree all the costs and charges in the case to be borne and paid by the property saved, and apportioned among the claimants according to their respective interests. The only admitted exceptions are, where the charges have been occasioned by the gross neglect or laches of the claimant, in which case they are to be

borne by him; or where the right has been forfeited by the misconduct of the salvors, in which case the court refuse any allowance to them, and compel the guilty parties to bear their own costs, expenses, and charges. *Ship Nathaniel Hooper*, 3 Sumn. 544.

14. (June, 1852.) When a third person appears and defends a suit in admiralty, in behalf and in the absence of the party to the suit, he is to be treated as a party, and made liable, personally, for the fees of the clerk of the court, for services rendered in the cause at his request. *Matter of Stover*, 1 Curt. C. C. 201.

15. Where a decree is made, dismissing a libel in admiralty "without costs to either party," it merely imports that the parties are not liable to each other for any costs, but does not affect the liability of a party to the clerk for his fees, for services rendered to such party. *Ib.*

16. (Nov., 1860.) The District Court, on dismissing a libel for want of jurisdiction, has no power to award costs against the libellant. *The McDonald*, 4 Blatchf. 477.

17. (April, 1847.) Where a libel is dismissed for want of jurisdiction apparent on its face, costs of suit cannot be awarded to either party; though the costs of the motion to dismiss may be to the party who succeeds. But where, on the face of the libel, the court has jurisdiction, and the want of it, though really existing, is disclosed only by the defendant's answer and the evidence taken in the case, costs of suit may be awarded to the party who succeeds. *Lowe v. The Canal Boat Benjamin*, 1 Wall. Jr. 187.

18. (Feb., 1856.) The act of Congress of March 3, 1847, regulating costs in admiralty proceedings *in rem*, where less than a hundred dollars is recovered, is repealed by the act of Feb. 26, 1853. *The Young Mechanic*, 3 Ware, 58.

19. The Process Act of July 12, 1813, sec. 2, does not require that where several persons have a like cause of action founded on a several liability to each, and not on a joint liability to all, they must join, under the penalty of a forfeiture of costs. (See Syllabus, also page 60 of text.) *Ib.*

20. (April, 1859.) The admiralty has a general discretionary power over costs; and when a seaman has a just cause of complaint, it will deny him costs, unless he allows to the master and owners a reasonable time for an amicable settlement of the dispute, before commencing his libel. *The Susan*, 3 Ware, 222.

21. (1861.) When two libels are filed where one only is required, costs only in one are allowed. U. S. Laws, v. 3, p. 19. *The R. P. Chase*, 3 Ware, 294.

22. (Aug., 1861.) Counsel fees cannot be allowed as part of the taxable costs, beyond the amount mentioned in U. S. Stat. 1853, c. 80. *Ship Liverpool Packet*, 2 Sprague, 37.

23. In salvage cases, counsel fees are sometimes considered by the court in estimating the amount of salvage to be given. *Ib.*

24. (Jan., 1864.) Practice. Fees and Charges in sales of forfeited property. *United States v. Fifty-one Dozen Pieces of Merchandise*, 2 Sprague, 100.

25. (March, 1874.) Courts of admiralty, within the limits of their jurisdiction, resemble courts of equity in their practice and modes of proceeding, but are even more free from technical rules. *Richmond v. New Bedford Copper Co.*, 2 Lowell, 315.

26. If a court of equity would not dismiss a case because some of the joint plaintiffs refused to proceed, a court of admiralty would not dismiss a libel under similar circumstances. *Ib.*

27. *It seems* that at law one of two joint contractors has the right to sue in the name of both, subject to the right of the other to be indemnified for costs, and to give a release of the joint cause of action. *Ib.*

28. A similar rule applied in the admiralty, where ten out of fifteen owners, having a majority of the shares in a ship, brought a suit in the name of all the owners. *Ib.*

29. Motion by the three unwilling plaintiffs to have their names struck out of the libel, denied, with leave to apply to have the suit stayed until they were indemnified for costs. *Ib.*

30. (Aug., 1830.) The regular method of proceeding against a surety in a stipulation for costs in a suit in admiralty is by petition, after notice to the surety. *The Baltic*, 1 Blatchf. & H. Adm. 149.

31. In such a case the decree may be final and peremptory. *Ib.*

32. Upon a proceeding by motion, after a personal demand of the costs from the surety, a conditional decree only will be awarded. *Ib.*

33. (Sept., 1830.) Where a dilatory plea was joined with a defense upon the merits, and the libel was dismissed upon the former, though it would have been sustained upon the latter, it was dismissed without costs. *The Martha*, 1 Blatchf. & H. Adm. 151.

34. (Nov., 1833.) When the proctor for the seaman intends, after a settlement with the seaman personally, to continue the suit to recover costs, distinct notice should be given to the party sought to be charged. *The Sarah Jane*, 1 Blatchf. & H. Adm. 402.

35. (Sept., 1843.) A party will not be allowed, by tacking a small undisputed claim upon which he has never made a demand, to a contested claim for wages denied him, to recover costs on the demand denied him. *The Steamboat Swallow*, Olc. Adm. 4.

36. Full costs will be decreed the claimant, although the demand of the libellants is less than fifty dollars to each. *Ib.*

37. (June, 1845.) A libellant who demands an entire sum when part of it has been paid according to his directions, and compels the respondent to defend, impairs his equity to costs in a court of admiralty. *Shaw v. Thompson*, Olc. Adm. 145.

38. A respondent who contests the entire demand of a libellant when a portion of it is justly claimed, although he defeats the suit in the main matters in contestation, loses his equity to costs. *Ib.*

39. Admiralty courts, in adjudging costs, in their discretion, regard the essential merits and equities of the parties rather than the result of the litigation. *Ib.*

40. And may withhold costs from both parties when neither purposes to do what is substantially just between them without litigation. *Ib.*

41. (July, 1845.) Costs are technically awarded to parties, but substantially they belong to the proctor to the suit, and the court will uphold his right to them against acts of the principal to his prejudice. *Collins v. Hathaway*, Olc. Adm. 176.

42. Where several seamen unite in an action *in personam* to recover wages, all of whom, except one, obtain decrees for fifty dollars and over, which are appealed to the Circuit Court, and a decree is rendered in favor of the other libellant for less than fifty dollars, he can tax full costs in his own name, and perfect and enforce, by execution, his decree for wages and costs. The causes of action and the final decree are all separate, and the remedy is as in a separate action. *Ib.*

43. An irregularity in the taxation of costs may be corrected by the court, on motion, after final decree rendered. *Ib.*

44. The practice is liberal in allowing a retaxation of costs,

where, by mistake, misapprehension, or other casualty, a party failed in opposing the original taxation, particularly where the costs claimed are large. *Ib.*

45. (Sept., 1845.) Under the rules of this court, in suits *in rem* for services on board of vessels in the North River, a libellant cannot recover costs when less than fifty dollars is in demand, if he had a clear remedy therefor known to him, in the local courts. *The Schooner Harriet*, Olc. Adm. 184.

46. The *onus* is upon the claimant to show that the libellant had such remedy, to entitle himself to a decree for costs. *Ib.*

47. The object of this rule was to prevent an unnecessary resort to the expensive proceeding *in rem*. It will not be so enforced as to compel the mariner to resort to the local courts only in case his remedy there is convenient and sure. *Ib.*

48. A similar doctrine prevails in the civil law, and is also employed as a means for preventing the creation of costs unnecessary in the prosecution of demands. *Ib.*

49. (Feb., 1846.) If the libellants fail in maintaining their action for double wages because of a short allowance of bread, and it appears that there was no colorable cause for bringing the action, they will be charged with full costs of suit. *The Bark Childe Harold*, Olc. Adm. 275.

50. When one of the libellants unites a demand for contract wages unpaid him with his claim for short allowance, and obtains a decree for the wages only, the court will only allow him proportionate costs against the vessel on the demand for wages, not including witness fees to his co-libellants, and will order full costs against him in connection with his co-libellants upon the other branch of the litigation. *Ib.*

51. (July, 1846.) The prevailing party in admiralty suits is *prima facie* entitled to recover costs. The decree in his favor implies that he has been wrongfully delayed or prevented. *The Ship Moslem*, Olc. Adm. 374.

52. Still the common-law rule to give costs in all cases to the successful suitor is not recognized in admiralty as the law of costs; but they are awarded at the sound discretion of the court, without regard to the ultimate termination of the action. *Ib.*

53. A seaman will be denied costs in a suit for a small balance of wages due him, when payment of the balance has not been demanded of the master or owner of the ship, and no refusal to

pay them has been made by either, and particularly if the seaman tacks to the debt other distinct and unsupported claims, and sues for the whole conjointly. *Ib.*

54. (July, 1846.) This court will not allow costs on the arrest of the vessel for a small cause of action, when the party has adequate remedy in the lower municipal courts, and especially if the suit is prosecuted vindictively, and with a view to create costs. *The Steamboat Boston*, Olc. Adm. 408.

55. (Oct., 1846.) When seven exceptions are filed to a commissioner's report, and six are sustained by the court, costs will be allowed therefor, to be deducted from the amount decreed to the libellant. *The Steamboat New Jersey*, Olc. Adm. 444.

56. (Feb., 1848.) Since the adoption of the Circuit Court Rules of 1845, Rule 96 of the District Court of 1838, refusing to a proctor in a suit fees as advocate, is abrogated in respect to all fees other than those specifically introduced and appointed by the District Court; and fees for services as proctor and as advocate are taxable to the same person. *Manchester v. Milne*, Abb. Adm. 158.

57. In what cases costs may be taxed for motions to postpone the hearing of a cause called in its order on the calendar. *Ib.*

58. Costs are not taxable for the preparation of written arguments, except upon a stipulation in writing to that effect. *Ib.*

59. In what cases costs may be taxed upon motions to enlarge time to answer, upon motions for final decree, motions for costs, for a reference, &c. *Ib.*

60. (Feb., 1848.) Where a libel demanded the recovery of \$6.75, wages due to each of two libellants, and \$75 to each for salvage services, and the claim for wages was allowed, but that for salvage service was disallowed, and the decree was generally for the wages due, "with costs," — *Held*, that plenary costs were taxable in favor of libellants. *The Remnants of the Caithneshire*, Abb. Adm. 163.

61. The discretionary power of the court over the award of costs cannot be exercised on an appeal from taxation, especially after the expiration of the term in which the decree is rendered. *Ib.*

62. (April, 1848.) Of the allowance of costs upon exceptions to a commissioner's report made in the alternative. *The Joshua Barker*, Abb. Adm. 215.

63. (April, 1848.) A mere attempt to negotiate a compromise of a claim at an amount specified, unaccompanied with a tender or direct offer to pay such amount, does not operate as an equitable bar to costs. *The H. B. Foster*, Abb. Adm. 222.

64. (April, 1848.) Costs of a suit for seamen's wages imposed on libellants, where the crew had taken possession of the vessel while on her voyage and brought her home, under reasonable grounds of suspicion that she was to be engaged in the slave-trade. *The Mary Ann*, Abb. Adm. 270.

65. (May, 1848.) It is the course of admiralty courts not to impose costs upon seamen, when they establish probable cause for instituting suits for redress. *Howland v. Conway*, Abb. Adm. 281.

66. (June, 1848.) An increased stipulation for costs should not be required from the claimants on account of a delay in the progress of the action occasioned or obtained by the libellants. *The Bark Laurens and \$20,000 in Specie*, Abb. Adm. 302.

67. (Feb., 1849.) Three causes, brought on the same facts by different libellants, being at issue, it was stipulated that two should abide the decision of the third. Before the third was brought to hearing, the libellant died, and his administratrix continued the cause. A decree was rendered in favor of the claimants, but *without costs*, for the reason that the action was prosecuted by an administratrix. *Held*, that in the other causes, the claimants were entitled to decrees dismissing the libels, *with costs*. *The Buffalo*, Abb. Adm. 483.

68. (April, 1849.) A libel was filed by each of two members of a ship's crew to recover damages for breach of a shipping contract; and subsequently eleven other libels were sworn to by eleven other members of the crew, upon the same state of facts and upon the same cause of action. Before answer was filed to either of these libels, and before the eleven libels were filed, a stipulation was entered into that the thirteen causes should be consolidated. An answer presenting two issues was then put in, and the cause having been brought on for hearing, the libellants prevailed upon the first issue, but the respondent succeeded upon the second. *Held*, on appeal from taxation of costs, (1) that the costs of the two separate libellants and of the respondent were to be taxed in both the two suits first commenced, up to the date of the consolidation; but from that date

the libellants' costs were to be taxed only in the suit which was thereafter prosecuted; (2) that full costs of the issue on which the libellants prevailed should be taxed in their favor, and full costs of the issue on which the respondent succeeded should be taxed to him; and that these two bills should be set off the one against the other, and the balance paid by the party from whom it might be due. *Simpson v. Caulkins*, Abb. Adm. 539.

69. (Nov., 1849.) Although the libellant, in his libel, claims a sum exceeding \$50, yet if upon the hearing he admits that an amount less than that sum is all that is due to him, and claims to recover only such lesser sum, he can recover only summary costs on a decree in his favor. *McGinnis v. Carlton*, Abb. Adm. 570.

70. This court does not tax plenary costs when the sum in dispute does not exceed \$50, although the proceedings are plenary. *Id.*

Decree. Admiralty.

1. (Feb., 1795.) It is objected that the damages awarded are joint; whereas they ought to have been several. This objection is a sound one. But as the facts are spread on the record, it is in the power of the court to sever the damages, and so to apportion them as to effectuate substantial justice. The damages should have pursued and been admeasured by the original decree, which directed that one moiety of the proceeds should be paid to the owners, and the other to the captors. George Wentworth received a moiety only; he is liable for that and no more. *Penhallow v. Doane*, 3 Dall. 88, 104, 115.

2. (Feb., 1813.) The decree must be *secundum allegata*, as well as *secundum probata*. *Schooner Hoppet v. United States*, 7 Cranch, 390.

3. (Feb., 1818.) Decree in an instance cause affirmed with damages, at the rate of six per centum per annum on the amount of the appraised value of the cargo (the same having been delivered to the claimant on bail), including interest from the date of the decree of condemnation in the District Court. *The Diana*, 3 Wheat. 46.

4. (Feb., 1824.) Where the property is restored, after a detention, demurrage is allowed for the detention of the ship, and interest upon the value of the cargo. *The Apollon*, 9 Wheat. 362.

5. Where the vessel and cargo have been sold, the gross amount of the sales, with interest, is allowed; and an addition of ten per cent sometimes made, where the property has been sold under disadvantageous circumstances. *Ib.*

6. Counsel fees may be allowed, either as damages or costs, both on the instance and prize side of the court. *Ib.*

7. (Dec., 1867.) Though damages for collision ought not to be awarded, to an amount beyond the stipulation given on the release or discharge of the offending vessel from attachment, yet within that amount they may be given, though exceeding those claimed by the libel originally, and while it was uncertain what the damages would be; if the libel have been properly amended. *The Hypodame*, 6 Wall. 217.

8. (Dec., 1869.) Where a collision between two vessels results from the fault of both of them, a party sustaining injuries from the collision may recover damages against both vessels; and they may be proceeded against in the same libel. *The Washington and The Gregory*, 9 Wall. 513.

9. The damages recovered in such a case may be apportioned by the decree equally between the two vessels; and at the same time the right be reserved to the libellant to collect the entire amount of either of them in case of the inability of the other to respond for her portion. *Ib.*

10. (Dec., 1869.) Non-prosecution of their claim by one set of salvors enures to the benefit of the owners of the vessel, and not to that of other salvors, who do prosecute *their* claim. *The Blackwall*, 10 Wall. 1.

11. (Dec., 1870.) In admiralty and revenue cases, when a default has been duly entered to a monition founded on an information averring all the facts necessary to a condemnation, it has substantially the effect of a default to a summons in a court of common law. It establishes the fact pleaded, and justifies a decree of condemnation. *Miller v. United States*, 11 Wall. 268.

12. (Dec., 1870.) Though sued jointly with the other general owners, in a libel which does not describe him as owner *pro hac vice*, a decree may be made against him alone. *Thorp v. Hammond*, 12 Wall. 408.

13. (Oct., 1873.) Where advances in a foreign port are made in gold, and drafts for the amount on the owners show that the payment to the parties making the advances is to be also in gold,

the court may direct that its decrees be entered for the amount, in like currency. *The Emily Souder*, 17 Wall. 667.

14. (Oct., 1876.) A collision between two vessels, which were at fault, resulted in the loss of the cargo of a third vessel which was not at fault. Its owner proceeded *in rem* against one of the offending vessels. *Held*, that he was entitled to a decree against it for the entire amount of his damages. *The Atlas*, 3 Otto, 303.

15. (Oct., 1876.) The doctrine announced in *The Atlas*, *supra*, p. 302, that where an innocent party suffers damages by a collision resulting from the mutual fault of two vessels, only one of which is libeled, the decree should be against such vessel for the whole amount of the damages, and not for a moiety thereof, reaffirmed, and applied to this case. *The Juniata*, 3 Otto, 337.

16. This court will not, in a case of collision, reverse the concurrent decrees of the courts below, upon a mere difference of opinion as to the weight and effect of conflicting testimony. To warrant a reversal, it must be clear that the lower courts have committed an error, and that a wrong has been done to the appellant. *Ib.*

17. (Oct., 1880.) The form of decree sanctioned in *The Alabama and the Gamecock* (92 U. S. 695) approved. *The Civilta and The Restless*, 13 Otto, 699.

18. (Oct., 1882.) In cases of collision, where both vessels were in fault, the maritime rule is to divide the entire damage equally between them, and to decree half the difference between their respective losses in favor of the one that suffered most, so as to equalize the burden. *The North Star*, 16 Otto, 17.

19. The practice, which obtains in England, of decreeing to each party half his damage against the other party, thus necessitating two decrees, is only an indirect way of getting at the true result, and grows out of the technical formalities of the pleadings, and the supposed incongruity of giving affirmative relief to a respondent. *Ib.*

20. *Semble*, that there is no good reason why, in such cases, the respondent, if he claims it in his answer, should not have the benefit of a set-off or recoupment of the damage which he sustained, at least to the extent of that done to the libellants. *Ib.*

21. If both parties file libels, the courts of the United States have the power to consolidate the suits, prescribe one proceeding,

and pronounce one decree for one half of the difference of the damage suffered by the two vessels. *Ib.*

22. The statute for limited liability is not to be applied in such a case until the balance of damage has been struck; and then the party against whom the decree passes may, if otherwise entitled to it, have the benefit of the statute in respect of the balance which he is decreed to pay. The decision to the contrary in *Chapman v. Royal Netherlands Steam Navigation Co.*, 4 P. D. 157, examined and disapproved. *Ib.*

23. (Oct., 1882.) A decree against two vessels at fault should be, not *in solido* for the full amount of damages sustained by the libellant, but severally against each for one half of his damage and costs, any balance which he shall be unable to enforce against either vessel to be paid by the other or its stipulators, to the extent of her stipulated value beyond the moiety due from her. *The Sterling and The Equator*, 16 Otto, 647.

24. (May, 1839.) All decrees in admiralty are deemed to be enrolled as of the term in which they are made. *Steamboat New England*, 3 Sumn. 496.

25. (Oct., 1824.) Courts of common law, as well as of admiralty, have jurisdiction over funds brought into court under their process, and to hear and determine the claims of third persons to a distribution of the fund. In case of money brought in under a sentence of condemnation, the court, before it is paid over to the collector, may decree to the informer his proportion. *Westcot v. Bradford*, 4 Wash. 492.

26. After the money brought into court under the condemnation is paid over to the collector, the court has no power to decree in favor of the informer, against the collector *in personam*, or against money of his in court arising from some source other than the admiralty proceeding. *Ib.*

27. (June, 1870.) A decree signed by a district judge after he has tendered a conditional resignation, but before it has been accepted by the government, is valid. *Northrop v. Gregory*, 2 Abb. U. S. 503.

28. (May, 1858.) In a suit *in personam*, the defendants not being within the district, but their property being attached, and no appearance entered, the decree will not be against the defendants personally, but only against the property attached. If that property consist of specific articles, the court will order a sale.

Such sale will be only the right of the debtor. *Boyd v. Urquhart*, 1 Sprague, 423.

29. If the property attached be money in the registry, the decree will be satisfied therefrom. *Ib.*

30. (March, 1859.) An information was filed against one case of stereoscopic slides, alleging them to be indecent and obscene, and praying that they might be condemned and destroyed, and the general issue was pleaded. The jury found that a part of the slides imported in the case were indecent, and that the rest were neither indecent nor obscene. Under such pleadings, only those found to be indecent can be condemned, and the residue must be acquitted. *United States v. One Case Stereoscopic Slides*, 1 Sprague, 467.

31. (Nov., 1861.) Where it was agreed that the libellant, in his capacity as owner, was indebted to the other owners in some amount not then ascertainable, but it was not shown that the indebtedness was, either by agreement or usage, connected with the contract of hiring, — *Held*, that the libellant was not precluded from recovering the whole amount due him as master. *Dexter v. Munroe et al.*, 2 Sprague, 39.

32. The claim of the owners in such case is a matter of set-off, of which admiralty has no jurisdiction. *Ib.*

33. (Nov., 1870.) A court of admiralty has no authority to decree the possession of a ship to her general owners on their libel, alleging that the charterers have failed to fulfill the contract on their part, the charter being one which gave possession and control of the ship to the charterers for a time certain, with no condition of forfeiture on a breach. *The Prometheus*, 1 Lowell, 491.

34. A court of admiralty may order a ship libeled for wages to be delivered to the general owners, if the charterers who are entitled to possession refuse to claim her. *Ib.*

35. (April, 1846.) On such mode of proceeding [where the owner and the mortgagee of a ship each claims in his answer, or by separate petition, that the proceeds of the vessel, after satisfaction of the bottomry security, be paid to him] the court may in its discretion adjudge prospectively between the contestants the method of distribution of the avails of the ship, or may defer the decision until her proceeds are paid into the registry; and may also, if the case is difficult or important, direct the parties

to litigate their claims to the fund by formal suit. *The Ship Panama*, Olc. Adm. 343.

36. (July, 1847.) A decree must be in consonance with the pleadings and proofs in the cause; and evidence outside the allegations made by either party cannot be regarded in support of his charge or defense. *The Steamboat Rhode Island*, Olc. Adm. 505.

37. (Jan., 1848.) In admiralty no decree can be rendered upon proofs merely, when the subject-matter of those proofs is not embraced within the pleadings. The decree must conform to the allegations of the parties. *Davis v. Leslie*, Abb. Adm. 123.

38. (Jan., 1849.) There is no rule of practice governing proceedings in admiralty suits in the District Court, which requires either party to give the other notice of a final decree, otherwise than by adopting the proper means for enforcing it. *Gaines v. Travis*, Abb. Adm. 422.

39. A decree from which an appeal may be taken cannot be executed within ten days after it has been rendered; but the delay is for no other purpose than to favor the right of appeal; and the mere entry of the decree is notice to all parties. *Ib.*

40. (Aug., 1867.) Where several libels were filed against a ship by material-men, and the vessel was sold, and application was made to the court to decree payment out of the proceeds,—*Held*, that the decrees should be paid in the order in which the libels were filed, each decree being paid with its costs until the fund was exhausted. *The Ship Adele*, 1 Ben. 309.

41. (Nov., 1867.) In a cause of collision against two vessels, if one of them is found to have been solely in fault, a decree may be rendered against her alone, although the libel charges the collision to have been caused by the joint negligence of both. *The E. C. Scranton and The Emerald Isle*, 2 Ben. 25.

42. (June, 1870.) Where the owners of a British vessel filed a libel to recover possession of her, against the master, who claimed a lien upon her under the English law and to hold her by such lien, and after the vessel had been seized by the marshal under the process in the action, the owners, through a new master whom they had appointed, chartered the vessel, and by consent of the marshal, but without the permission of the court, began to load the vessel under the charter,—*Held*, that the act of the owners

in interfering as they had done with the vessel while in the custody of the law would well justify the court in declining to exercise jurisdiction in the premises; but as that had been done with the consent of the marshal, and the rights of the defendant could be otherwise protected, the court would decree that the libellants recover possession of the vessel without costs, on their paying into court the inward freight collected by them less the usual inward charges, including unloading and crew's wages, as security for the payment of any sum found due to the master in an action to be brought by him within twenty days, if he was so advised. *Muir v. Brig Brisk and Alfred Morine*, 4 Ben. 252.

43. (July, 1879.) A libel being filed against a man and his wife, and process with a clause of foreign attachment having issued, the marshal attached property. The wife filed a claim to the property and gave a bond under the act of 1847. The libellant examined the sureties as to their sufficiency, and, they having justified, the property was discharged. The cause was thereafter tried and resulted in a decree in favor of the libellant against the husband, and a dismissal of the libel against the wife. The libellant moved for a decree that the sureties on the bond pay the decree against the husband, on the ground that it had appeared on the trial that the property attached and delivered up on the giving of the bond was really the property of the husband. *Held*, that whether it was irregular practice or not, to file a claim in an action *in personam*, nevertheless the sureties could not be held beyond the terms of the bond which they had signed; and that by the bond they had only become sureties for the performance by the wife of any decree against her, and could not be called on to pay the decree against the husband. *Jaycox v. Chapman*, 10 Ben. 517.

44. (Feb., 1834.) The court will be very reluctant to get rid, by any equitable or convenient construction, of the unequivocal provisions of the act of July 20, 1790, which oblige a master who carries out a seaman without first making a written contract, to pay him the highest wages of the port at which he shipped. *Wickham v. Blight*, Gilp. 452.

45. (Aug., 1834.) Where a libellant in a suit *in rem* in the admiralty establishes a clear legal right to a condemnation and sale, there is no discretionary power in the court to refuse or postpone an order of sale. *Davis v. A New Brig*, Gilp. 474.

46. (Feb., 1835.) Where money subject to distribution is in court after the report of an auditor, the decree does not follow the report of the auditor as a matter of course because no exception has been taken. *Harper v. The New Brig*, Gilp. 536.

47. (May, 1839.) Where the owner of one-eighth of a schooner disapproved of a voyage sanctioned by the other part owners, the court ordered the other part owners to secure the dissenting one in double the value of his share. *Fox v. The Schooner Lodeinia*, Crabbe, 271.

48. (Feb., 1841.) Where a party, lately master, and claiming to be part owner of a vessel, prayed for possession and also for security for her safe return from a voyage projected by the other owner, and the question of title depended on the state of the accounts between the parties, which could not conveniently be settled before the court, an interlocutory order was made, that the vessel be delivered to the libellant, to proceed on the projected voyage, on his own stipulation for her return and submission to the order of the court, and on payment of the costs accrued at the date of the order, but the ultimate liability for those costs to await a final decree. *Coverdale v. The Schooner North America*, Crabbe, 420.

49. (Aug., 1841.) Libel by a seaman for assault and battery. In fixing the amount of damages, the court will consider the situation of the parties and the various aggravating or mitigating circumstances of the case. *Schelter v. York*, Crabbe, 449.

50. (1854.) A decree in admiralty is the judgment of the court on the subject in controversy submitted by the pleadings, and must correspond with and apply to that issue. *Ward v. The Brig Fashion*, Newb. Adm. 41.

51. The opinion of the judge on collateral matters not involved in the record is not to be incorporated in the judgment of the court. *Ib.*

52. When a recovery in damages is sought in cases of collision between two vessels, and the proof exhibits faults in both, or no fault in either, and the libel is therefore dismissed, the decree need not set forth the ground assumed by the court, unless the pleadings presented such issue. *Ib.*

Default.

1. (May, 1876.) Where a seizure is made on water, and the proceeding is consequently in admiralty, and there is default, the court should use a wise discretion whether to require proofs or not. *United States v. Steamer Mollie*, 2 Woods, 318.

2. In all such cases, proclamation to appear should be made, and a decree entered for default and contumacy, and upon reading the libel and proceedings thereon, and with or without proof, as the court may direct, such decree should be made as the nature of the case may require. *Ib.*

Depositions.

1. (Feb., 1816.) That the deponent is a seaman on board a gun-boat, in a certain harbor, and liable to be ordered to some other place, and not to be able to attend the court at the time of its sitting, is not a sufficient reason for taking his deposition *de bene esse*, under the Judiciary Act of 1789. *The Samuel*, 1 Wheat. 9.

2. (Dec., 1851.) *Ex parte* depositions, under the act of 1789, without notice, ought not to be taken, unless in circumstances of absolute necessity, or in cases of mere formal proof, or of some isolated fact. *Walsh v. Rogers*, 13 How. 283.

3. (Dec., 1861.) In an admiralty suit, an objection to the deposition of a witness, on the ground of incompetency from interest, must be made at the hearing; it comes too late if it be deferred until the argument. *Nelson v. Woodruff*, 1 Black, 156.

4. Where a deposition was taken by a person who was both commissioner and clerk of the court, and the proctor of the opposing party knew that the deposition had been taken, it cannot be ruled out on the ground that it was not sealed up, that the preliminary proof of materiality was not made, or that notice of its being filed was not given. *Ib.*

5. (Dec., 1865.) The court, admitting that, within reasonable limits, cross-examination is a right, and, on many accounts, of great value, reflects upon an exercise of it as excessive, in a case where there were between four and five hundred cross-interrogatories. *The Ottawa*, 3 Wall. 268.

6. (Dec., 1866.) Depositions cannot be used on the trial of a suit in admiralty, which were taken in another suit concerning the same subject-matter, where the party against whom they are offered was not a party to the suit in which they were taken, nor privy to any such party, and had no right to cross-examine the witnesses. *Rutherford v. Geddes*, 4 Wall. 220.

7. Nor can depositions be read in admiralty any more than at common law, without some sufficient reason being shown why the witness was not produced at the hearing. *Ib.*

8. (Oct., 1814.) Where there is an attorney of record, it is improper to take depositions without notice to him or to the party. *The Argo*, 2 Gall. 314.

9. When depositions are taken to be used against the United States, if there be an attorney of the United States within one hundred miles of the place of caption, he must be notified. *Ib.*

10. (Nov., 1868.) The practice of taking down by questions and answers, and not by way of narrative, the testimony given *viva voce*, in open court, in admiralty suits, reprobated. *The Syracuse*, 6 Blatchf. 238.

11. Rules on that subject made by the Circuit and District Courts of this district. *Ib.*

12. (Nov., 1818.) A party who offers as evidence in an appellate federal court a deposition taken *de bene esse* must show that the requisites of the Judiciary Act have been complied with, viz.: that the deponent is dead, out of the United States, or gone to a greater distance than one hundred miles, &c., and unless he does this the deposition cannot be read. *The Thomas & Henry*, 1 Brock. 368.

13. (April, 1848.) The testimony of witnesses may be taken on a commission sent abroad, whose names are not inserted in it [and may be used at the hearing], on satisfactory proof furnished after its return that their names or materiality were unknown when the commission was sent out or transmitted. *The Infanta*, Abb. Adm. 263.

14. (July, 1867.) Depositions of the crew of the ship were read, from which it appeared that, when they were being taken, the proctor for the bark objected to the presence of the master of the ship, on the ground that his presence might exercise an undue influence over the witnesses, and the commissioner excluded him. *Held*, that the commissioner was in error in exclud-

ing the captain of the ship from being present at the taking of the depositions of the crew. It was not only his privilege but his duty to be there, especially as he was a stranger contesting his rights before a foreign tribunal. He should not have been excluded unless his contumacy compelled that course. *The Bark Havre.* — *The Ship Scotland*, 1 Ben. 296.

15. *Held*, that proof of the title to the bark by her alleged owner might be given after the trial. *Ib.*

16. (Jan., 1868.) Where an application was made for a commission to examine a witness in the East Indies, it appearing that no one was known who could be named as commissioner, except the wife of the witness, she was named as commissioner. *The Ship Norway*, 2 Ben. 121.

17. (Feb., 1878.) Two suits *in rem* in admiralty were brought against the same vessel for a collision, one by the owners of a schooner, and the other by the master of the schooner in behalf of the owners of her cargo. The libellant in the latter suit moved for an order that he be allowed to read in evidence against the claimants in that suit a deposition which had been taken on behalf of the libellants in the former suit. *Held*, that the motion must be denied. *The Steamboat John H. Starin*, 9 Ben. 331.

18. (Nov., 1878.) Depositions *de bene esse* taken pursuant to section 863 of the Revised Statutes of the United States, may be opened before the trial, by order of the court, upon motion of one party to the suit and against the objection of the other party. *United States v. Tilden*, 10 Ben. 170.

19. (Oct., 1879.) On motion to suppress depositions of witnesses for claimant, because taken before answer, — *Held*, that no rule of practice requires the answer to be filed before taking depositions; and no prejudice to the libellant in this case appearing, the motion must be denied. *The Ship Pride of the Ocean*, 10 Ben. 610.

20. *Semble*, that where answer is delayed for a purpose, and prejudice to the libellant's case appears, such a motion might prevail, in the absence of any rule. *Ib.*

21. (June, 1857.) Though a deposition be taken under a stipulation waiving "all objections to the form and manner of taking," it must still be returned to court in all respects as provided by law. *Livingston v. Pratt*, 1 Brown, 66.

22. Where a deposition so taken was left for several months

in the hands of the defendant's attorney, and was not placed on file until the morning of the trial, the court held that it could not be read. *Ib.*

23. (Feb., 1873.) Depositions opened out of court and without the consent of the opposite party cannot be read in evidence. *The Roscius*, 1 Brown, 442.

24. Such consent to publication out of court should be in writing. *Ib.*

Discontinuance.

1. (Nov., 1844.) A libellant has the right at any stage of the cause voluntarily to discontinue the same; and the only penalty to which he can legally be subjected is the payment of the costs of the proceedings. *The Brig Oriole*, Olc. Adm. 67.

2. (April, 1868.) Where a possessory libel was filed by one B., claiming to be the owner of a propeller, and that she had been taken from him by H. and others, and process was issued against the propeller, and against such persons, under which process the marshal, on March 2, 1868, took possession of the vessel, taking her by force from the representative of H. and others, who claimed to hold her by bills of sale and mortgages, and, on March 10, no appearance having been entered in the cause, the libellant discontinued the suit, and the clerk of the court notified the marshal to discharge the vessel from custody, whereupon the marshal withdrew from the vessel, and B., who had been allowed by the marshal to come on board the vessel, took possession of her, and took her out of the district, and thereafter H. and the others presented a petition to the court praying that the marshal might be directed to restore the vessel to the petitioners, from whom he had taken her,—*Held*, that, the suit having been discontinued, the court had no longer any possession of the vessel, or jurisdiction of the suit, or power to grant the relief prayed for. *The Propeller Jack Jewett*, 2 Ben. 353.

Evidence. Admiralty.

1. (Feb., 1810.) In order to prove the condemnation of a vessel, it is only necessary to produce the libel and sentence. *Marine Ins. Co. v. Hodgson*, 6 Cranch, 206.

2. (Feb.; 1823.) Where the *onus probandi* is thrown on the claimant, in an instance or revenue cause, by a *prima facie* case, made out on the part of the prosecutor, and the claimant fails to explain the difficulties of the case, by the production of papers and other evidence, which must be in his possession or under his control, condemnation follows from the defects of the testimony on the part of the claimant. *The Luminary*, 8 Wheat. 407.

3. (Oct., 1814.) An attested copy of a bottomry bond, executed in a distant foreign country, being produced by the libellant, a continuance was allowed, under the circumstances, to enable him to procure the original. *The Jerusalem*, 2 Gall. 191.

4. (May, 1829.) Where goods are seized, and claimed as forfeited as part of the cargo, the *onus probandi* is on the government to prove that such goods were part of the cargo on board at the time of the offense. The claimant may file a special defense on that point, if he chooses; but it is also in issue on the general denial of the allegations of the libel. *United States v. An Open Boat*, 5 Mason, 232.

5. (May, 1855.) Ordinarily a libel filed by a party to another suit cannot be given in evidence against him as his confession. But if he brought the suit as a trustee, and recovered, the *cestui que trust* may put the whole record in evidence, to show the recovery and the title on which it rested. *Church v. Shelton*, 2 Curt. C. C. 271.

6. (Nov., 1880.) M., as master of a boat C., which was in tow of the steamtug D., filed a libel *in rem* against the D. and the steamtug B. and the scow N., to recover damages for the loss of the C. by a collision between her and the N. while the N. was in tow of the B. The libel alleged fault in various particulars in the D., the B. and the N. The answer of the D. denied all fault in her. The B. and the N. answered separately, each answer denying fault in either the B. or the N. The answer of the D. alleged that the fault was wholly in the B. and the N., "as alleged in the libel." The answers of the B. and the N. each alleged that the fault was wholly in the D. and boats in her tow. The libellant offered no proof: *Held*, that the burden was not on either of the boats sued, but was on the libellant, to show fault in the boats sued, and that, in the absence of proof of such fault by the libellant, the libel must be dismissed. *The*

L. P. Dayton, The James Bowen and The Number Four, 18 Blatchf. 411.

7. An examination of the answer of each vessel did not disclose a *prima facie* case of negligence by her. *Ib.*

8. (July, 1856.) Admiralty. The proofs [on behalf of respondents] must be limited to the averments in the answer. *Turner v. Ship Black Warrior*, McAll. 181.

9. (July, 1824.) In a joint libel against two or more persons for a marine tort, the court has the authority to dismiss the libel as to one of them, even if there be some evidence against him, for the purpose of his being used as a witness, if the purposes of justice require it. *Elwell v. Martin*, 1 Ware, 45.

10. A court of admiralty, being judge both of the law and fact, is not, in this respect, confined to the strict rules of the common law. *Ib.*

11. But if there be any evidence to inculcate him, the dismissal of the libel as to him cannot be demanded as a matter of right. *Ib.*

12. (June, 1837.) There is no rule in the admiralty like that in equity, which precludes the court from making a decree, against a denial by the answer of any matter alleged in the libel, unless it is disproved by two witnesses. *Hutson v. Jordan*, 1 Ware, 393.

13. How far the answer in the admiralty is considered evidence. *Ib.*

14. (Nov., 1837.) How far the sworn answer of the respondent may be referred to, as in the nature of suppletory proof, or in aid of presumptions raised by other proofs in the cause. *The Crusader*, 1 Ware, 448.

15. (April, 1839.) Before the defendant can be heard in his defense or introduce evidence in the cause, he must appear and contest the suit either by exceptions to the libel, or by answering it. If he does neither, the court will hear and adjudge the cause *ex parte* upon the evidence offered by the libellant. *The David Pratt*, 1 Ware, 509.

16. But when it appears that the defendant has neglected to put in an answer through ignorance of the practice of the court, and is at the time of the hearing absent, the court is not precluded from receiving any evidence which his counsel may offer as *amicus curiæ*. *Ib.*

17. (May, 1843.) The proofs in the case must be confined to the matters that are put in issue by the libel and answer. *Pettingill v. Dinsmore*, 2 Ware, 212.

18. (Sept., 1827.) Testimony in admiralty taken *ex parte* is to be received with the greatest caution. *American Insurance Co. v. Johnson*, 1 Blatchf. & H. Adm. 10.

19. (March, 1832.) Where, in a suit *in personam* for wages, the answer alleged, by way of set-off, payment of a board bill during the absence of the libellant from the vessel, and the evidence offered raised a strong presumption that such payment had been made, — *Held*, that if the libellant would not admit the payment, the respondent might, on filing an affidavit that such payment had been made at the libellant's request, have time to procure proof thereof, and to sue out a commission or a *dedimus potestatem* for that purpose. *Ingraham v. Albee*, 1 Blatchf. & H. Adm. 289.

20. (Feb., 1844.) *Quære*, whether proof of the handwriting of a subscribing witness to a receipt, the witness being dead, is adequate evidence of its execution. *Piehl v. Balchen*, Olc. Adm. 24.

21. (Feb., 1844.) In an action upon a bottomry bond, the production and proof of the execution of the bond will not entitle the libellant to a decree in his favor. He must prove, to the satisfaction of the court, a necessity for the expenditures for which the money was advanced. *The Brig Bridgewater*, Olc. Adm. 35.

22. The libellants should exhibit an account of the items of expenses for repairs, supplies, &c., that the Court may judge whether they were necessary for effectuating the objects of the voyage. *Id.*

23. (July, 1846.) When a witness is examined *de bene esse* out of court in an admiralty cause, by the claimants, and is cross-examined by the libellant, who reads the cross-examination in support of his action, the libellant cannot then except to the competency of the witness because interested in the cause, and exclude his testimony given in chief for the claimants. *The Brig Osceola*, Olc. Adm. 450.

24. (Feb., 1847.) The federal courts will, upon motion and for good cause shown, authorize the name of a party to be stricken from the pleadings; and he can then be examined as a witness,

subject to all legal objections. *The Steamboat Neptune*, Olc. Adm. 483.

25. (Feb., 1834.) Where shipping articles have been signed by a seaman and delivered to the master, and the amount of wages is omitted by mistake or accident, without fraud, it is competent to either party to show by parol testimony what the contract was in relation to wages. *Wickham v. Blight*, Gilp. 452.

26. (Feb., 1841.) In an action by a seaman for his wages, where the owner or master endeavors to deprive him of them by an allegation of misconduct, the respondent will be held to strict proof, and be required to make out a clear case. *Benton v. Whitney*, Crabbe, 417.

27. In an action by a seaman against his officer for assault and battery, the libellant must make out a clear case by credible and consistent proof. *Ib.*

Non Compos Mentis. Guardianship.

1. (Feb., 1837.) A person who, from incapacity of mind or other cause, cannot be made to understand the English language, cannot be a party to a sworn libel. He should sue under the guardianship of a committee, a *prochein ami*, or a trustee. *Sunday v. Gordon*, 1 Blatchf. & H. Adm. 569.

Hearing.

1. (April, 1858.) In a libel *in rem* for a forfeiture, there must be some hearing before a decree of forfeiture. *United States v. Schooner Lion*, 1 Sprague, 399.

2. This may be by merely examining the libel and the return of the marshal, and evidence that the owners had actual notice and had wilfully made default, having knowledge of material facts. *Ib.*

Injunction. Admiralty.

1. (Dec., 1875.) C., the master of a brig, filed a libel *in personam* against the D. & D. S. F. Co. to recover freight on a cargo of sugar brought in the brig from Bahia to New York under a charter-party and bill of lading. Before answering, the company

presented a petition to the court, in which they set forth that they had entered into the charter-party with one B., who had the disposition and control of the brig at Bahia, under which the sugar was shipped and the bill of lading signed; that the sugar was brought to New York and delivered to them, and they were willing to pay the freight, as to the amount of which there was no dispute; that a suit was threatened against them by L. & Co., as assignees of B., to recover the same amount; and they prayed that they might be allowed to pay the money into court; that C. might be enjoined from further proceedings in this suit against them, and that L. & Co. might be enjoined from commencing any suit against them, and that they might have their costs out of the fund. L. & Co. appeared and consented to the prayer of the petition, but C. opposed it. It appeared that C. had chartered the brig in New York to B., for a voyage to Bahia and back, and that the charter referred to in the bill of lading was a sub-charter, made by B. in Bahia, to which C. was not a party; that the freight due the vessel under the original charter to B. had been paid, but that there was a controversy between B. and C., as to a claim for the detention of the vessel in Bahia, arising out of the terms of the original charter, and that C. sought to collect this freight to secure such claim.

Held, that a court of admiralty not only has the power but is charged with the duty of devising methods whereby all questions of which it can take cognizance may be adjudicated speedily and justly;

That the court had jurisdiction of the parties, two of them being before the court, and the other consenting to appear;

That the court had power to restrain the parties as prayed for;

That the rights of all the parties could only be adjusted in the way requested, and would be as well protected so as in any way;

That the fact that the result would be to turn the proceeding from a proceeding *in personam* to a proceeding against the freight *in rem* was no objection;

That the prayer of the petition should be granted. *Copp v. The Decastro & Donner Sugar Refining Co.*, 8 Ben. 321.

2. (May, 1878.) The District Court has the power to issue an injunction order restraining the prosecution of suits against the ship and the ship-owners who have sought the benefit of the

rule of the maritime law limiting their liability. Such an order is an essential part of the relief intended to be conferred by the rule of the maritime law. *Churchill v. The Ship British America*, 9 Ben. 516.

3. The libellants in this court, having also commenced an action *in personam* against the owners of the ship, in the Southern District of New York, and having been unable to serve process upon any of them because of their being foreigners and non-residents, and such owners never having voluntarily appeared in that action, the injunction prayed for was ordered to be issued, provided that the ship-owners should first enter their appearance in the action pending in the Southern District. *Ib.*

Interest. Admiralty.

1. (Feb., 1795.) I am of opinion that interest should have been computed from the day on which the definitive sentence of the Court of Appeals was pronounced. *Penhallow v. Doane*, 3 Dall. 88, 103.

2. (Dec., 1854.) Interest cannot be added, in computing the amount, unless it is specially claimed in the libel. *Udall v. Steamship Ohio*, 17 How. 17.

3. (May, 1814.) In suits for wages, interest is allowed from the time of a demand proved; and if no demand is proved, from the commencement of the suit. *The Resolution*, 2 Gall. 45.

4. (March, 1879.) The rule as to interest on damages and costs, stated. *Vanderbilt v. Reynolds*, 16 Blatchf. 80.

Marshal.

1. (June 1876.) Under section 829 of the Revised Statutes, which provides that "when the debt or claim in admiralty is settled by the parties without a sale of the property, the marshal shall be entitled to a commission," the marshal is entitled to such commission in a suit *in rem*, against a vessel, if process is issued, and a bond to the marshal is given under the act of March 3, 1847 (9 Stat. at Large, 181), (now section 941 of the Revised Statutes), although the service of the process is waived and the vessel is not actually seized under the process. *The City of Washington*, 13 Blatchf. 410.

2. Under said section 829, where the amount of a final decree is paid before execution, the debt or claim is settled. *Ib.*

3. (April, 1867.) Where a question arose between the marshals of the Southern and Eastern Districts of New York, as to which made the first seizure of a vessel in waters over which both District Courts exercise concurrent jurisdiction, and on a petition by one marshal to the court to have the other give up the custody of the vessel to him, the court heard evidence as to which seizure was prior, — *Held*, that such a question was more properly raised on a petition by the marshal, than on a plea to the jurisdiction by a party in whose favor the marshal held process. *The Steamer Circassian*, 1 Ben. 129.

4. (April, 1871.) A libel having been filed against a steamer, she was seized under process issued on it, and was discharged from that arrest on a stipulation for value. Subsequently a final decree was rendered against her for \$148,700, and that sum was paid into the registry of the court by the claimants, without an execution having been issued or a sale of property having taken place. Thereupon the marshal by whom the original process was served, but who had in the mean time gone out of office, presented to the clerk for taxation a bill for his commissions on the \$148,700, under the fee bill of Feb. 26, 1853 (10 Stat. 161), as on a settlement of the case. The clerk declined to tax the bill, and the marshal appealed. *Held*, that the payment of the money under the decree was a settlement of the claim by the parties within the language of the fee bill, and that the marshal was entitled to the commission. *The Steamship Russia*, 5 Ben. 84.

5. (March, 1856.) That portion of the first section of the act of Congress regulating the fees and costs of the clerks, marshals, and attorneys of the Circuit and District Courts of the United States, which provides that "in case the debt or claim shall be settled by the parties without sale of the property, the marshal shall be entitled to a commission of one per cent on the first five hundred dollars of the claim or decree, and one half of one per cent on the excess over five hundred dollars," should not be so construed as to give the marshal a right to exact such commission in a case where the claim of the libellant has been settled before any claimant of the property libeled appears in court. *Bone v. The Steamer Norma*, Newb. Adm. 533.

6. The law was not intended to confer a gratuity upon the

marshal, but it contemplated the presence of both the parties litigant in court, and the whole progress of the litigation short of the sale under the final decree, or the possession of the property by the marshal, and the usual proceedings under an interlocutory order of sale, without the sale itself. *Ib.*

Motion. Admiralty.

1. (Jan., 1849.) A motion to discharge respondent from arrest, on the ground that the libellant has no legal cause of action against him, will not be granted where the affidavits read upon the motion in behalf of the respective parties are contradictory as to the merits of the cause. *Wicks v. Ellis*, Abb. Adm. 444.

2. (Feb., 1849.) A motion to dismiss an appeal taken from a decree in the District Court to the Circuit Court must be made in the Circuit Court. *The Josephine*, Abb. Adm. 481.

3. (April, 1867.) A vessel was seized by a state sheriff under a state lien law. Afterwards process was issued against her in the United States District Court, in a suit on a bottomry bond. The proceedings in the State Court having gone to a sale, the purchaser, who had paid twenty per cent of the purchase-money, but had not completed the purchase, applied to the District Court for an order directing the marshal to surrender the vessel to him. *Held*, that the question whether the custody by a sheriff of a vessel under a writ alleged to be void is such as to prevent a court of admiralty from acquiring jurisdiction of the vessel, is one which should not be determined on motion. *The Steamer Circassian*, 1 Ben. 128.

Motion for New Trial. Admiralty.

1. (Jan., 1874.) A new trial is not ordered in an admiralty suit, on the mere ground of oversight in not putting in evidence which might have been put in. *The Steamship Francis Wright*, 7 Ben. 88.

2. (Nov., 1836.) In an action for assault and battery, the respondent's counsel having addressed the court, the case was submitted by the other side without reply, on the understanding that it should be immediately decided, and a decree was at once entered for the libellant. On the respondent's counsel moving

for a new trial under these circumstances, on the ground of surprise, the court refused the motion. *Greigg v. Reade*, Crabbe, 64.

3. (1798.) Motion for a new trial does not suspend the entering of judgment after one verdict; but execution will be stayed on application to the court. *Arnold v. Jones*, Bee, Adm. 104.

Notice of Sale.

1. (July, 1847.) Under the act of Congress of March 2, 1799 (1 Stat. 696, sec. 90), the notice of sale, in cases of condemnation under the act, must be published every day for fifteen days in the newspapers directed by the act. *The Hornet*, Abb. Adm. 57.

2. Under Rules 47, 48 of the District Court, notice of sale under *venditioni exponas* (except on condemnation of property on seizure by the United States) must be published for six days; and the sale will be set aside if this full number of publications is not made. *Id.*

Order at Chambers.

1. (Nov., 1819.) An order made by a district judge of the United States, for the release of a vessel libeled for a breach of the embargo laws, is as valid, if made by the judge at his chambers, as if it were made in open court. *United States v. Schooner Little Charles*, 1 Brock. 380.

Proctor. Costs.

1. (Nov., 1841.) During the pendency of a suit for wages by a seaman, the libellant, without the knowledge of his proctor, settled his claim, receiving only the wages due. The proctor was allowed to proceed for and to recover costs. *The Brig Planet*, 1 Sprague, 11.

2. (June, 1844.) The proctor of the libellant, having given notice to the respondent that he should ask only for a decree for costs, cannot at the hearing proceed for damages. *Angell v. Bennett*, 1 Sprague, 85.

3. A proctor who has commenced a suit for a seaman, upon a just claim, may proceed for costs after a settlement made by the

parties without his knowledge. And this, too, where the respondent did not know, at the moment of the settlement, that a suit had been commenced; but had previously had notice that the proctor had been employed, and might easily have learned what had been done. *Ib.*

4. (Feb., 1846.) The proctor for the libellant, in a suit for a seaman's wages, may have a decree for costs, notwithstanding a clandestine settlement with his client. *Collins v. Nickerson*, 1 Sprague, 126.

5. (April, 1854.) After service of process in a suit by a seaman against an officer for a tort, a settlement was made without the knowledge of the libellant's proctor, but in good faith, and when the situation of the respondent was such that there was more danger of undue influence upon him than upon the libellant. *Held*, that the proctor could not recover his costs. *Purcell v. Lincoln*, 1 Sprague, 230.

6. (Oct., 1858.) A proctor in admiralty cannot release or compromise a debt due to his client, without special authority. *Bates v. Seabury*, 1 Sprague, 433.

7. But he is authorized to receive payment. And an insufficient amount paid to a proctor in settlement is a discharge *pro tanto*. *Ib.*

8. (Dec., 1835.) A notice by the proctor for the libellant to the respondent personally, in an action for a personal tort, that, in case of a compromise out of court, he will be held liable for the costs, does not vary the relative rights of the parties, and need not be regarded. *Peterson v. Watson*, 1 Blatchf. & H. Adm. 487.

9. *Seem* that the proper notice in such case would be, that the respondent pay to the proctor for the libellant the amount of the compromise money. *Ib.*

10. Where a suit is compromised without satisfying a proctor's costs, and he desires to prosecute it to recover his costs, the regular practice is to notice the cause for trial, and give notice to the opposite party that the suit is continued to recover costs and nothing more. *Ib.*

11. (Nov., 1844.) A suit by a proctor in the admiralty for his costs or fees is a familiar proceeding in the admiralty tribunals both in this country and in England. *McDonald v. The Ship Cabot*, Newb. Adm. 348.

12. Negotiations for the adjustment of a suit in admiralty should be conducted in the presence of the proctors of the parties, as they have a personal and legal weight, and a direct responsibility to the court. *Ib.*

Recoupment. Admiralty.

1. (May, 1856.) In a suit by a carrier against a consignee, for freight, the consignee having made advances upon the consignment and received the goods, may in defense, by way of recoupment, set up a claim for damages by the breach of his contract by the carrier. *Snow v. Carruth*, 1 Sprague, 324.

2. There is no general doctrine of set-off recognized in the admiralty. *Ib.*

3. And if a respondent set up a claim by way of recoupment, it can go only to diminish or extinguish the demand of the libellant. *Ib.*

4. If the damage sustained by the respondent exceeds such demand, he can have no decree for the balance. *Ib.*

5. It is at his election whether to set up his claim in defense or to file a cross-libel therefor. *Ib.*

6. But if he set it up in defense, by way of recoupment, and his damages exceed the claim of the libellant, he will not be allowed to maintain a suit for the excess. *Ib.*

7. (Aug., 1867.) *Held*, that the damages to the cargo could be recouped in this suit for freight. But that the respondents could not have an affirmative decree in their favor, if that damage exceeded the freight. *Kennedy v. Dodge*, 1 Ben. 311.

Referees. Admiralty.

1. (Aug., 1861.) An award of a referee will not be recommended because the counsel for the libellants omitted to call the attention of the referee to a matter which might have influenced the referee, if his attention had been called to it, to increase the amount of salvage. *Ship Liverpool Packet*, 2 Sprague, 37.

2. An award, made in pursuance of a rule of court, directing the referee to determine the amount due and the question of costs, is sufficiently certain if it states the amount due, and that the libellants are entitled to costs, without stating the amount of the costs. *Ib.*

3. (1869.) A submission to three referees does not authorize an award by two only. *The Nineveh*, 1 Lowell, 400.

4. An award in a case of collision, which decides the liability, but not the damages, is not valid, because not final. *Ib.*

5. Where such an award had been rendered under a rule to three arbitrators, and one of the three refused to act further, the award and rule were set aside. *Ib.*

6. (May, 1830.) The clerk's report, in matters referred to him, should state facts and conclusions, and not detail the evidence at length. *The Trial*, 1 Blatchf. & H. Adm. 94.

7. (April, 1845.) Where the rights of parties depend upon questions of nautical skill or seamanship in the management of a vessel, the court may refer the subject to persons skilled in navigation, and act upon their report thereon. *The Brig Emily*, Olc. Adm. 132.

8. (Dec., 1850.) Where a cause is referred to experts to ascertain and report upon facts appertaining to their calling or experience, it is the settled rule, both at law and in admiralty, to adopt the decision of the referees, unless there is a manifest preponderance of testimony against it. *The Isaac Newton*, Abb. Adm. 588.

Release by Seamen.

1. (Feb., 1841.) Where the payment of a seaman's wages is refused unless he signs a receipt containing a release of all complaints against his officers, no attention whatever will be paid to such release. *Whitney v. Eager*, Crabbe, 422.

2. The court will consider the situation of the parties in fixing the amount of damages to be awarded. *Ib.*

Return.

1. (April, 1867.) Where a marshal, who had process against a vessel, made return that he had attached her, but that previous to his attachment she was in custody of a state sheriff, and where it appeared that, of the warrants under which the sheriff held the vessel, all that were in his hands at the time of the alleged attachment by the marshal were afterwards declared void for want of jurisdiction, and the libellant thereupon applied for an order to compel the marshal to amend his return by striking out all refer-

ence to the custody of the sheriff, — *Held*, that the marshal is responsible for the execution of the process put into his hands, and should be left free to state what he does with it, subject to that responsibility, and that the court therefore would not interfere. *The Steamer Circassian*, 1 Ben. 128.

2. That a marshal's return stating a seizure of the vessel, but that at that time the vessel was in custody of a state sheriff, does not imply any such seizure as would make the marshal responsible, or would give the court jurisdiction. *Ib.*

3. (Feb., 1870.) To a process containing a clause of foreign attachment, the marshal should have returned that the respondent was not found, and had no goods and chattels within the district, and that thereupon his credits and effects had been attached in the hands of the garnishees. *Cushing v. Laird*, 4 Ben. 70.

4. The return could be amended to conform to the facts. *Ib.*

5. The marshal has the power under the 28th and 32d sections of the act of Sept. 24, 1789 (1 Stat. 88), to amend, after he goes out of office, his return to any process which was in his hands when he went out of office. *Ib.*

6. (Sept., 1878.) A libel having been filed against D. and R., which averred that "the respondents are in this district or have goods, &c., to wit: the ship *Swallow*," process was issued against D. and R. with a clause of foreign attachment. D. and R. resided out of the district, but had a regular and well-known place of business within the district, and were usually to be found there during business hours every day. The marshal made no attempt to find them. He returned to the process that the respondents were "not found" and that he had attached their right, title, and interest in the ship. On the return of the process D. and R. failed to appear, their default was taken, and a reference ordered. H. and C. claiming to own the ship, and finding that she was in custody of the marshal, gave a bond, under the act, and the vessel was released. They then moved to compel the marshal to amend his return, and to vacate the attachment and have the bond canceled. In opposition to the motion the libellants produced affidavits tending to show that D. and R., under a contract to purchase the ship, had paid a large part of the price, but had not got title to her, and that the debt was due, and that D. and R. did not desire to have the motion granted. *Held*, that the marshal's return that the respondents

were "not found" was a false return; that H. and C. were so interested as to be entitled to make this motion, and were not estopped from making it by having given the bond, and that as there was no dispute about the facts, the court could give the relief asked, on motion as well as in an action against the marshal for a false return; that the marshal must be directed to amend his return by striking out the words "the within respondents not found;" that the attachment must be vacated and the bond canceled, and all proceedings subsequent to the issue and return of the process must be set aside. *The International Grain Ceiling Co. v. Dill et al.*, 10 Ben. 92.

Revivor.

1. (Feb., 1795.) The proceedings of a court of admiralty being *in rem*, the death of one of the parties before a judgment is rendered on appeal will not abate the suit or avoid the judgment. *Penhallow v. Doane*, 3 Dall. 86, 101, 117.

2. (April, 1846.) If a party to an action dies pending a suit in this court, and the cause of action survives, no disadvantage accrues therefrom to either party. A suggestion of the fact *apud acta* removes the technical difficulty. *Nevitt v. Clarke*, Olc. Adm. 316.

3. (Oct., 1867.) Where a suit to recover for materials furnished to a vessel was commenced in September, 1857, and, in December, 1857, the cause being then at issue, the claimants procured an order for a commission to examine a witness, with a stay of proceedings till its return, and direct interrogatories were served in June, 1858, but no cross-interrogatories were ever served, and the commission was never sent, and the libellant died in May, 1859, and no further steps were taken by either party till October, 1867, when the libellant's executors applied to the court to be substituted as libellants, and to have the stay of proceedings set aside, — *Held*, that as no time was fixed by statute within which executors must apply to be substituted, no laches could be predicated of the mere lapse of time, and inasmuch as the claimants could have at any time compelled the executors to be substituted, the claimants were as open to the charge of laches as the libellant, and the application to substitute the executors must be granted. *The Ship Norway*, 1 Ben. 493.

Rules of Decision.

1. (Feb., 1815.) The principle of retaliation or reciprocity is no rule of decision in the judicial tribunals of the United States. *The Nereide*, 9 Cranch, 389.

2. (Oct., 1875.) Sailing rules and regulations prescribed by law furnish the paramount rule of decision whenever they are applicable; but where, in any case, a disputed question of navigation arises, in regard to which neither they, nor the rules of this court regulating the practice in admiralty, have made provision, evidence of experts as to a general usage regulating the matter is admissible. *The City of Washington*, 2 Otto, 31.

Sale. Admiralty.

1. (Dec., 1874.) A sale under a decree in admiralty will be set aside where there has been fraud or misconduct by the purchaser, fraudulent negligence or misconduct by any other person connected with the sale, surprise or misapprehension created by the conduct of the purchaser or by some other person interested in the sale or by the officer who conducted it; and the power of the court to set aside such a sale may be called into exercise by petition. *The Steamer Sparkle*, 7 Ben. 528.

2. (1854.) Where a party applying to a court of admiralty to set aside a sale is guilty of inexcusable laches in making his application, the motion will not be granted. *Pease v. The Propeller Napoleon*, Newb. Adm. 37.

3. As to whether there are circumstances or not, under which the court would set aside a regular sale in admiralty, *quære. Ib.*

4. Where a party applying to set aside a sale knew of the institution of the suit before sale, knew of the sale within two weeks after it took place, and yet delayed making his application for nearly six months, his laches is inexcusable. *Ib.*

Security for Costs. Admiralty.

1. (Aug., 1837.) The rule of the court requiring the libellant to give security for costs is established for the benefit of the other party, which he may waive at his pleasure. *Polydore v. Prince*, 1 Ware, 410.

2. If the libellant, in consequence of poverty, is unable to find sureties, his juratory caution will be taken instead of a stipulation with sureties. *Ib.*

3. (Feb., 1854.) The practice in admiralty, of exempting seamen from giving security for costs, is on account of their presumed inability. *Wheatley v. Hotchkiss*, 1 Sprague, 225.

4. Any person may sue there without giving such security, upon proof of inability. *Ib.*

5. This rule does not necessarily apply to appeals. And where there is evidence that a seaman is of ability, the court will order him to give security for such costs as the appellate court may decree, unless he shall prove himself unable to do so, by satisfactory affidavits. *Ib.*

6. (April, 1858.) Upon suggestion that the owners were unable to give security for costs, the court required an affidavit of ownership, inability, and merits, before it would require the government to make further proof of the allegations of the libel. *United States v. Schooner Lion*, 1 Sprague, 399.

7. The libel having been dismissed, the owner was allowed to intervene as claimant without giving security. *Ib.*

8. (Sept., 1843.) When a sailor brings a suit *in rem* against a ship to enforce a conditional agreement made with the master and outside of the written articles, he will be required to file a stipulation for costs in the same manner as an ordinary suitor. *The Ship Great Britain*, Olc. Adm. 1.

9. Rule 45 of the District Court was intended to give seamen high privileges for the collection of the wages agreed upon for their services. It will not be extended to claims extraneous to the contracts for wages. *Ib.*

10. A cook not allowed to proceed, under the rule, *in rem* against a vessel to enforce a demand for the *slush* made during a voyage, when that perquisite was not agreed for in the shipping articles. He must give the stipulations exacted in ordinary cases from libellants. *Ib.*

11. (July, 1845.) The rule relieving seamen from stipulations for costs produces no unreasonable inequality as against ship-owners. *Collins v. Hathaway*, Olc. Adm. 176.

12. (Nov., 1873.) A libel was filed by a seaman for balance of wages due and clothing destroyed. The claimants moved that he be required to file security for costs, showing by an affidavit

of the United States shipping commissioner that a receipt in full for the wages had been given before such commissioner by the seaman. *Held*, that the creation of the office of shipping commissioner gives courts of admiralty greater assurance than formerly that the just demands of the seaman have been discharged in any settlement made before the commissioner; and that the rule allowing a seaman to libel without giving security must be modified in cases where the seaman has been paid off before the shipping commissioner. *The Brig Niveto*, 7 Ben. 69.

13. (Nov., 1871.) A seaman suing for his wages cannot be compelled to give security for costs, for the sole cause that the amount claimed is small and the indebtedness is denied in the answer. *The Arctic*, 1 Brown, 347.

Set-off. Admiralty.

1. (Oct., 1825.) In general, set-offs are not admissible in the admiralty. *Ship Mentor*, 4 Mason, 84.

2. (July, 1858.) A set-off, or compensation founded on contract, express or implied, is no defense to a libel in a cause of damage. But in a suit by a parent for the wrongful abduction of his minor son, where the damage, substantially, is loss of service, the court is not absolutely precluded from taking into consideration, in determining the amount of damage, the advances of clothing and other necessities for the minor during the time. *The Platina*, 3 Ware, 180.

3. (Feb., 1843.) Duties wrongfully imposed, if paid by the importer voluntarily and without protest or remonstrance, cannot be recovered from or set off against the United States. *United States v. Clement & Newman*, Crabbe, 499.

Shipping Articles.

1. (July, 1846.) In a suit upon shipping articles by a seaman to recover wages for a voyage, if the articles are not produced by the master or owner at the trial, after due requirement by the seaman, his statement of the contents thereof, when disputed, will be *prima facie* evidence of the same. *The Brig Osceola*, Olc. Adm. 450.

2. But a call for the articles at the time of trial is not a suffi-

cient requirement, unless it be made to appear that they are then in presence of the court or directly within the control of the master or owner. *Ib.*

3. *Quære*, if the statement of the mariner is proof of any more than the master is bound by sec. 1 of the act of July 20, 1790, to insert in the articles, to wit: "a declaration of the voyage or voyages, and term or terms of time, for which the seaman or mariner shall be shipped." *Ib.*

4. If a seaman ships under articles at Boston in December, 1842, and at New Orleans in March, 1843, and leaves the ship at Bordeaux in June, 1843, and in his libel, filed against the vessel in this court for wages on those voyages, he prays that "the shipping articles may be produced by the master or owner," that is not such notice or requirement as will render his statement proof of their contents. *Ib.*

5. (Jan., 1849.) In defense to a libel for wages as cook and steward by one William *Henry*, respondent put in shipping articles executed by William *Henderson* as cook and steward, *Held*, that the presumption was that the libellant was the person who had entered into the articles. *Henry v. Curry*, Abb. Adm. 433,

6. Maritime courts will not lay much stress on an objection of misnomer, unsupported by evidence that the party was in fact not known by the name ascribed to him. *Ib.*

7. *It seems* that where original shipping articles are proved before a commissioner, and redelivered to the vessel, which thereupon pursues her voyage, a copy certified by the commissioner is competent evidence upon the hearing. *Ib.*

Stay. Admiralty.

1. (Oct., 1867.) *Held*, that, as the delay [in examining a witness under a commission] had arisen apparently from the fact that both parties understood that the suit was not to be further prosecuted, and as the witness to be examined under the commission was material, and was now in the East Indies, and a commission to examine him could not be executed in less than a year, the claimants were entitled to a continuance of the stay. *The Ship Norway*, 1 Ben. 494.

2. (July, 1870.) A quantity of cotton was shipped on board the steamship *Idaho*, bound for Liverpool, by M., who received a

bill of lading therefor in the ordinary form dated May 4, 1869. On the same day an action of replevin was commenced by P. against the master of the steamship, to recover the cotton as his property. In that action, the cotton was seized by the sheriff, and was by him nominally delivered to P., the plaintiff, but was not taken from the steamship, and, by agreement between P. and the owners of the steamship, it was carried forward to Liverpool, and there delivered to the agent of P., who had agreed to indemnify the steamship against any liability by reason of such carriage and delivery to him. M., having assigned his bill of lading to H. & Co., a libel was filed in this court on June 9, 1869, by them, against the steamship, to recover the value of the cotton not delivered according to the bill of lading. On the 19th of June an action was commenced in the Court of Exchequer, in Liverpool, by F., the agent of H. & Co., against the owners of the steamship, to recover damages for the non-delivery of the cotton under the bill of lading. After the filing of the libel in this court, H. & Co., were made parties defendants in the replevin suit on their own application. The answer of the claimants in the suit in this court set up the title of P. to the cotton as a defense against the claim of H. & Co.

In this position of affairs P. applied to this court, on petition, praying to be admitted to defend in this action, and that the libellants be required to litigate with him their title to the cotton, or, if they would not stipulate to do so, that their further proceedings in the suit in the English Exchequer be enjoined. The owners of the steamship also applied for a stay of proceedings in this cause, unless the libellants should elect to stay proceedings in the two other actions, and to proceed herein. *Held*, that the interest of P. in this suit arose solely from his having agreed to indemnify the claimants against the result of the litigation, and that that circumstance was not sufficient to give him the right to intervene in the action.

That his application for a stay of proceedings in this action must be rejected for the reason that he was not a party to the suit and did not pretend that there was any collusive use by the parties of the process of the court to deprive him of any substantial right; that it is competent for a court of admiralty to stay proceedings in any case before it, to prevent injustice; that no reason was apparent why the trouble and expense of the three

litigations, each involving the title to the same property, should be cast upon the owners of the ship; and that, on the application of the claimants, proceedings in this cause should, therefore, be stayed, unless the libellants should elect to stay proceedings in the other cases. *The Steamship Idaho*, 4 Ben. 272.

Tender.

1. (June, 1855.) Where a fair and liberal allowance as salvage is tendered to the libellants or their proctors, the court will be bound to decree costs against the libellants, to be paid out of their distributive share. *Hessian v. The Steamboat Edward Howard*, Newb. Adm. 522.

2. (June, 1859.) A tender after suit brought must include costs, though the process has not been served. *The Sunshine*, 1 Brown, 75.

Waiver.

1. (Dec., 1866.) But if such parties do not present, and ask to have it decided (their maritime lien), the question is not properly before this court for review, in a case where the District Court has only dismissed the libel as improperly filed on its instance side. *The Nassau*, 4 Wall. 635.

2. (May, 1868.) The execution of a delivery bond, under the act of March 3, 1847, is a waiver of the objection that a seizure of the vessel should precede the filing of the libel, and that no seizure had been made. *The Lewellen*, 4 Biss. 167.

3. (May, 1836.) When a party objects to the jurisdiction, if the objection is founded on a personal privilege of declining the forum, it must be made before entering a general appearance and answering to the merits. *The Bee*, 1 Ware, 326.

4. (March, 1858.) Where a libel against the cargo was filed, to recover the balance due under a charter-party, before the cargo had been discharged from the vessel, — *Held*, that a previous agreement by the claimant that such a libel should be commenced, and his assisting the officer in arresting the goods, and afterwards obtaining them by giving stipulation without objection, was a waiver of any right which he might have had to object to the time of instituting the suit, as premature. *The Salem's Cargo*, 1 Sprague, 389.

5. (May, 1830.) A neglect, at the trial, to object to the competency of evidence, is a waiver of the right to object to the same evidence on a subsequent reference to the clerk. *The Trial*, 1 Blatchf. & H. Adm. 94.

6. (Feb., 1832.) Where, in a suit *in rem* for wages, an answer is filed to the merits, and issue is joined, and the case is brought to a hearing, and proofs are taken on both sides, that is a waiver by the claimant of any right of exception to the regularity of the proceedings of the libellant as to the time of instituting his suit, under the sixth section of the act of July 20, 1790 (1 Stat. 131, 133). *The Edward*, 1 Blatchf. & H. Adm. 286.

7. (Feb., 1836.) Where a replication¹ is not filed within the time required by the rules of the court, the respondent will be held to have waived the benefit of the rules in that respect, unless he takes advantage of the point when evidence is offered at the hearing. *Thomas v. Gray*, 1 Blatchf. & H. Adm. 493.

8. (June, 1848.) The libellant entered an irregular default against the respondent, and moved the cause on for hearing on a reference to a commissioner. The respondent appeared, took no objection, but consented to adjournments. *Held*:

(1.) That his appearance, &c. before the referee, constituted a voluntary consent on his part to waive the irregularities committed, and to submit the case to the determination of the commissioner.

(2.) That the court had power, however, to set aside the proceedings, and would do so, on terms, inasmuch as it was necessary to do so in order to enable the respondent to have the benefit of his real defense. *Gaines v. Travis*, Abb. Adm. 297.

9. (Aug., 1867.) Where a libel was dismissed by default in 1860, and the claimant, without notice to the libellant, entered an order, in 1861, canceling the stipulation for costs and the bond under the act given on the discharge of the vessel, but thereafter agreed to open the default, and the case was, in 1864, noticed for hearing by both parties, but, when it was called for hearing, in March, 1864, the claimant's proctor stated that it had been dismissed, and thereupon the libellant's proctor moved to set aside the decree and the order of cancellation, which motion was adjourned by consent till the present time, — *Held*, that the claimant was regular in entering the order of cancellation without

¹ See Rule 51.

notice to the libellant, the libel having been dismissed by default. *The Brig Antelope*, 1 Ben. 343.

10. That the claimant had, by his acts, waived the decree dismissing the libel, and the order of cancellation. *Ib.*

11. That the court had power to vacate that decree and order, so as to hold the stipulators still liable on their stipulations. *Ib.*

12. (June, 1869.) Where a libel was filed by the consignee named in a bill of lading, to recover damages for non-delivery of the goods, and the libel contained no averment that the libellant was the owner of the goods, and the answer set up that the goods were delivered, but did not allege that the libellant was not the owner of them, or contain any exception to the libel for not averring ownership in the libellant, — *Held*, that, on these pleadings, the point that the libellant was not the real owner of the goods must be taken as having been waived. *The Steamship Ville de Paris*, 3 Ben. 276.

13. (Aug., 1869.) The general appearance of a party to a suit *in personam* waives all irregularities in the service of process, and confers jurisdiction so far as the person is concerned. *Matter of Ulrich*, 3 Ben. 355.

14. Such jurisdiction, when once conferred, cannot be withdrawn by the act of the party who has so appeared, without the consent of the court, or of the prosecuting party. *Ib.*

15. (March, 1874.) A vessel was chartered to bring a cargo of sugar and molasses from Havana to New York, at specified rates of freight. No provision for bills of lading specifying a different rate of freight was embodied in it. The cargo was agreed by the charter to be bound for the faithful performance of the agreements contained in it. At Havana a modification, agreed upon between the captain of the ship and the agents of the charterers, was indorsed on the charter, in which a lump sum of \$3,828 was specified as freight. Under this agreement 979 boxes of sugar were shipped. Some days after this shipment the charterers' agents required the master to sign bills of lading for the sugar, providing for its delivery, at New York, to order, on payment of freight at the rate of one dollar a box, and making no reference to the charter-party. The master, insisting that this was not according to agreement, signed the bills of lading, but wrote before his signature the words "Signed under protest." The shippers indorsed and delivered these bills of

lading to P. & Co., who indorsed and delivered them to Y. & Co. at New York, who, on the arrival of the vessel at New York, tendered to the master the \$979, and demanded the sugars. The master refused to deliver them, except on payment of the full balance of the charter money. Y. & Co. then filed a libel against the sugar and the master of the vessel, praying that the sugar might be seized under the process, and by a decree of the court delivered to them. On this libel process was issued as in a cause of possession, and the sugar was taken into the custody of the marshal, and thereafter, on consent of the parties, delivered to the libellants on their giving a stipulation in the sum of \$4,000, which, it was agreed, was to be considered as in the place and stead of sugar to that value held in custody by the marshal. No question was raised as to the regularity of the practice, and both parties agreed that the claimants should have a decree that the libellants pay the amount of their stipulation into court, for the benefit of the claimants, in case the court should determine that the ship-owner had a lien on the sugar for the amount due under the charter-party. *Held*, that no opinion would be expressed as to the regularity of the practice, and the question of law would be determined as desired by the parties. *Nine Hundred and Seventy-nine Boxes of Sugar*, 7 Ben. 242.

16. (June, 1875.) A defense not set up in the answer, but proved without objection, may be upheld. *The Steamboat Oswego*, 8 Ben. 129.

17. (May, 1838.) Where the respondent's counsel does not object to the examination of the libellants as witnesses, the court will receive their evidence. *Ferrara v. The Bark Talent*, Crabbe, 216.

18. (June, 1859.) The giving of a stipulation to answer judgment is a waiver of an illegal service of process. *The Acadia*, 1 Brown, 73.

19. (June, 1874.) It is the duty of the claimant to put his objections upon the record, and unless he does so he will be deemed to have waived them by appearing, examining witnesses, and contesting the case upon the merits. *The Detroit*, 1 Brown, 141.

20. (March, 1874.) A motion to strike the claim and answer from the files, on the ground that it appeared on the hearing

that the claimant had no interest in the property at the time the answer was filed, will not be entertained. *The Prindiville*, 1 Brown, 485.

21. If the claim is not put in issue, and the libellant goes to a hearing upon the merits without objection, it is a waiver of such preliminary inquiry, and an admission that the claimant is rightly in court. *Ib.*

R U L E S
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
SOUTHERN DISTRICT OF NEW YORK.

[The first 241 of these Rules were adopted by the court Nov. 6, 1838. The Rules which follow Rule 241 were subsequently adopted, as shown by their several dates. The titles to these Rules were prepared by the compiler of this book. And the Rules are inserted here because they are often alluded to in the Reports of the Court, and because of their similarity to the rules of practice in all District Courts.]

Rule 1. — Libel, Information, or Petition.

A libel, information, or petition, must state plainly the facts upon which relief is sought, without any repetitions or amplification of the charges.

Rule 2. — Process.

No process shall issue until the pleading or statement in writing upon which it is allowed be duly filed.

Rule 3. — Libels. Verifying.

Libels (except on behalf of the United States) praying an attachment *in personam* or *in rem*, or demanding the answer of any party on oath, shall be verified by oath or affirmation.

Rule 4. — Oath of the Party to Pleadings, except, etc.

The oath or affirmation of the party himself, in all cases where one is necessary, shall be required to pleadings filed in his name, except as is hereafter otherwise provided, or as shall be specially ordered by the judge.

Rule 5. — Libels, &c., which need not be sworn to.

Libels, informations, or petitions, praying a monition or citation only, without attachment, need not be sworn to.

Rule 6. — Libels, &c., must be engrossed.

Libels, and other proceedings to be filed, shall be plainly and fairly engrossed, without erasures or interlineations materially defacing them. If papers not conforming to this Rule are offered, the clerk shall require the *allocatur* of the judge to be indorsed thereon, before he receives them on the files.

Rule 7. — Amendments.

Amendments, or supplementary matters, must be connected with the libel or other pleading by appropriate references, without a recapitulation or restatement of the pleading amended or added to.

Rule 8. — Suits for Seamen's Wages. Joining Parties.

In suits for seamen's wages, any mariner in the same voyage, not made a party, may, by short petition to the court, in any stage of the cause previous to the final distribution of the fund in court, or discharge of the defendant and his sureties, be joined as libellant in the cause, but no costs shall be allowed for the proceedings taken to make him a party.

Rule 9. — Proctor. Indemnity for Costs, by Mariner joining as Libellant.

The proctor in the original cause shall not, however, be compelled to proceed in behalf of such petitioning mariner, unless a reasonable indemnity is offered for such costs as may be incurred in consequence of his being joined in the cause.

Rule 10. — Salvage Cases, &c. Petition to be made Co-libellants.

In case of salvage and other causes, civil and maritime, persons entitled to participate in the recovery, but not made parties in the original libel, may, upon petition, be admitted to prosecute as co-libellants, on such terms as the court may deem reasonable.

Rule 11. — Process, when to be returnable.

Process on libels or informations may be made returnable on any day, at a stated or special term, but writs for the sale of property under any order or decree of the court, and all final process, shall be returnable at a stated term, unless, upon cause shown, an earlier day is specially appointed by the judge.

Rule 12. — Special Sessions.

Tuesday of each week is appointed as a special sessions of the court (except the stated term be then in session), at which the same proceedings may be taken, in causes of admiralty and maritime jurisdictions, as at a stated term.

Rule 13. — Forms of Process for commencing Suits.

Process to be used in commencing suits shall be a citation or monition; an attachment *in rem* united with a monition, or, by special allowance of the judge, with an attachment *in personam*; an attachment *in personam* and a writ of foreign attachment.

Rule 14. — Process as in Supreme Court of State.

Where no specific process is provided by the rules, parties may have such process as is in use in like cases in the Supreme Court of the state.

Rule 15. — Citation or Monition.

Where it is not desired to arrest a defendant, the clerk, on filing a libel or information, may, at the instance of the actor, issue a citation or monition, according to the usage in civil and admiralty proceedings.

Rule 16.—Process in Personam for Arrest, upon Order.

No process *in personam*, for the arrest of any person, in cases of torts or unliquidated damages, shall issue, except upon the mandate of the judge.

Rule 17.—Attachment in Personam, without Order. Stipulation for Costs.

In cases of liquidated damages, when the certainty and amount of the demand appear upon the face of the libel, an attachment *in personam* may be issued by the clerk without an order. The attachment shall plainly express the cause of action and the amount of the demand, and the clerk shall indorse thereon the sum for which bail is required, not exceeding \$100 above the sum sworn to be due and unpaid; but no attachment or citation shall be issued until the libellant shall have filed a stipulation for costs, in the sum of \$100, except in suits by the United States.

Rule 18.—Return of Citation or Warrant.

On the return of a citation or warrant by the marshal “served personally,” the party shall be deemed in court, and may be proceeded against accordingly.

Rule 19.—Decree of Contumacy, &c. Attachment for Contempt of Process, &c.

When the citation or monition, in suits *in personam*, is not served personally, the libellant may, at his election, pursue the defendant to a decree of contumacy, in which decree may be embraced an order for the attachment of the defendant as for contempt of process; or, on verifying by oath the matters demanded by the libel, the libellant may have an attachment *in personam* instanter, on the return of the citation “not served.”

Rule 20.—Attachment in Personam. Subsequent Proceedings.

In the latter case all subsequent proceedings may be as if the attachment had been sued out in the first instance.

Rule 21. — Bail, on Warrants to arrest the Person.

On warrants to arrest the person, in admiralty and maritime causes, the marshal may take bail in the form of a stipulation, and in the sum indorsed on the warrant, conditioned for the appearance of the party on the return day to answer to the libellant in a cause civil and maritime, according to the course of the court.

Rule 22. — Bail Stipulation. Effect of perfecting and filing.

The sureties having made oath thereon to their sufficiency, and the bail stipulation being filed, it shall have the same effect in favor of the actor, and against the defendant, as if taken in court; and the marshal shall be deemed discharged of all personal responsibility for the appearance of the respondent.

Rule 23. — Bail Stipulation. Neglect to perfect and file.

In case the marshal does not file such stipulation, or the sureties, being required, refuse to justify, like proceedings may be taken to compel the marshal to bring in the party, as if no stipulation had been entered into.

Rule 24. — Bail Stipulation. Condition how satisfied.

The condition of the stipulation shall be deemed satisfied if the party shall appear in person on the return day of the warrant, and submit himself for commitment, or enter into the usual stipulation in the cause, according to the course of the court.

Rule 25. — Attachment of Property to compel Appearance.

If a party against whom a warrant of arrest issues cannot be found, and return thereof be made, the plaintiff may, upon the mandate of the judge, have a warrant to attach the property of the defendant, and may also have inserted therein a clause of foreign attachment, according to the course of the admiralty.

Rule 26. — Attachment may be dissolved, when.

In all cases of attachment, under admiralty process, to compel an appearance, the attachment may be dissolved on the party's giving a stipulation with sureties, to the same effect as in cases of arrest.

Rule 27.—Foreign Attachment. Proceedings.

In cases of foreign attachment, if the defendant appear, the same proceedings may be had as is usual in suits *in personam*, and, if he make default, the court will proceed *ex parte*, and pronounce the proper decree, unless the attachment is discharged at the instance of the garnishee.

**Rule 28.—Process against Goods, Choses in Action, &c.
Order for issuing.**

Process cannot issue against goods, choses in action, or moneys in the hands of third persons, except by the order of the judge and upon due proof of the claim first made; and the names of such persons, and also of the persons whose effects are to be attached, together with a specification of such effects, shall be expressed in the process.

Rule 29.—Service of Foreign Attachment. Subsequent Proceedings.

On the service of the attachment by arrest of property, the parties holding the property or funds attached shall, on the return day of such process, file an affidavit containing a full and true statement of the property or funds in their hands, belonging to the principal party at the time the attachment was served and at the time the deposition is made, and declare whether they have any, and, if any, what claim to any, and what part thereof; and shall then, on motion of the actor, pay into court such amount as they shall not claim, or as may be ordered by the court, or give stipulation, with sufficient surety, to abide the further order or decree of the court in relation thereto; and, on their default in this behalf, a rule may be entered, that an attachment issue against them, unless they shall show cause in four days, or on the first day the court is in session afterwards.

Rule 30.—Service of Foreign Attachment, how made.

When the property, effects, or credits named in the process are not delivered up to the marshal by the garnishee or trustee, or are denied by him to be the property of the party, it shall be a sufficient service of such foreign attachment to leave a copy thereof with such trustee, or at his residence or usual place of business, unless the libellant shall, by competent surety, indemnify the marshal for arresting the property pointed out to him.

Rule 31.—Return to Foreign Attachment, served by Notice and Copy.

On the return, by the marshal, of service of such attachment by notice and copy, with the reason thereof, the libellant may move the court for a peremptory attachment, or such order as the equity of the case may demand; or, on proof, satisfactory to the court, that the property, &c., belongs to the defendant, may proceed to a hearing and final decree in the cause, as if the property had been held in arrest.

Rule 32.—Process, when to be returned.

All process to the marshal shall be returned on the return day thereof, and if he shall not return the same in four days after being required in writing so to do by any party or his proctor, upon affidavit of such requirement and of the delivery of the process to him, an order may be entered of course that he show cause why an attachment shall not issue against him; and in case of process *in rem*, the return of the marshal shall express the day of the seizure of the property, or the day of sale, if a process for that object.

Rule 33.—Process, by whom to be returned.

No process shall be received on file unless duly returned by the officer to whom directed.

Rule 34.—Return of Process requiring to be acted on.

In case the court is not in session at the return of process, requiring to be acted on in open court, proceedings shall be deemed continued to the next sitting of the court (either stated or special), at which time the like proceedings may be had thereupon as if then returnable.

Rule 35.—Proclamation after Return of Process. Default or Contumacy.

On proclamation, after due return of process, the libellant shall be entitled to a decree of default or contumacy, according to the nature of the case, and the three proclamations heretofore used are abolished.

Rule 36.—Mandate to show Cause why Arrest or Attachment should not be vacated.

In case of the attachment of property, or the arrest of the person, in causes of civil and admiralty jurisdiction (except in suits for seamen's wages, when the attachment is issued upon certificate, pursuant to the Act of Congress of July 20, 1790), the party arrested, or any person having a right to intervene in respect to the thing attached, may, upon evidence showing any improper practices, or a manifest want of equity on the part of the libellant, have a mandate from the judge, for the libellant to show cause *instanter* why the arrest or attachment should not be vacated.

Rule 37. — Stipulations.

Stipulations may be taken, in admiralty and maritime causes, out of court, before the clerk or a commissioner, under a *dedimus potestatem*. The officer taking the stipulation shall, if required by the opposite party, examine the sureties on oath and decide as to their competency. An appeal may be taken *instanter* to the judge, in case the decision is against the sufficiency of the sureties.

Rule 38. — Conditions of Stipulations in Causes in Personam.

The conditions of stipulations in causes *in personam* shall be, that the principal, whenever required by this court, or an appellate court, in case of appeal, shall appear and answer to the cause or to interrogatories, and pay all costs that may be decreed against him; and, by the respondent or defendant, that he will also perform and abide all orders and decrees in the cause, interlocutory or final, or deliver himself personally for commitment, in execution of such orders, to the proper officer.

Rule 39. — Amount of Stipulation.

The amount of stipulation on the part of the defendants, in causes *in personam*, shall be the sum indorsed on the warrant, and, *in rem*, on the delivery of the property attached, the appraised or agreed value of the property seized, unless the sum, in either case, is modified or enlarged by order of the court.

Rule 40.—Application to reduce or discharge Bail Stipulation.

Application may be made instanter to the judge, after an arrest *in personam*, to mitigate the amount of the bail stipulation; and like application may be made, at any time after property has been delivered on bail stipulation, upon facts occurring after such delivery, to discharge such stipulation, or to reduce the amount, according to the equity of the case, previous notice of the application having been given the proctor of the libellant.

Rule 41.—Notice of Application for delivering on Stipulation.

Two days' notice shall be given the proctor of the libellant, of application for delivering up on stipulation property under attachment; specifying the sureties intended to be given, and their occupations and places of residence, and the officer before whom, and the place where, the stipulation will be offered, except in suits by seamen for wages, when such notice may be instanter.

Rule 42.—Condition of Stipulation for releasing Property.

The stipulation or bond to be given upon releasing and delivering up property arrested by process of the court shall be conditioned that the claimant and his sureties shall, at any time, upon the interlocutory order or decree of the court, or of any appellate court to which the case may proceed, and on notice of such order to the proctor of the party to whom the property shall have been delivered, bring into court the appraised or agreed value of such property, or any part thereof so ordered or decreed: If no proctor is employed by such party, the order or decree shall be deemed peremptory two days after the same is entered.

Rule 43.—Registering Stipulations.

The clerk shall provide a book in which shall be registered all stipulations filed in causes civil and admiralty, which shall be open to the examination of all parties interested.

Rule 44.—Stipulation for Costs.

No process *in rem* shall be issued, nor shall any appearance or answer be received, or third party be permitted to intervene and claim, except on the part of the United States, unless a stipulation in the sum

of two hundred and fifty dollars shall be first entered into by the party, and at least one surety, resident in the district, conditioned that the principal shall pay all costs awarded against him by this court, or, in case of appeal, by the appellate court.

Rule 45. — Seamen suing for Wages, and Salvors, need not give Stipulation for Costs.

But seamen suing *in rem* for wages in their own right and for their own benefit, for services on board American vessels, and salvors coming into port in possession of the property libelled, shall not be required to give such security in the first instance. The court, on motion, with notice to the libellants, may, after the arrest of the property, for adequate cause, order the usual stipulation to be given in these cases, or that the property arrested be discharged.

Rule 46. — Notice of Arrest of Property to be published.

Notice of the arrest of property by attachment *in rem*, in behalf of individual suitors, shall be published and affixed in the manner directed by act of Congress in the case of seizures on the part of the United States, except when the judge by special order directs a shorter notice than fourteen days; and except that, instead of the substance of the libel, a short statement of its purport may be given.

Rule 47. — Notice of Sale of Property.

Notice of sale of property after condemnation, in suits *in rem* (except under the revenue laws, and on seizure by the United States), shall be six days, unless otherwise specially directed in the decree of condemnation and sale.

Rule 48. — Manner of publishing Notice of Sale.

All such notices shall be published in the manner directed by act of Congress, in the case of condemnation under the revenue laws.

Rule 49. — Marshal's Fees for Custody of Vessel.

The marshal shall be allowed (in conformity to the former usage of the court) one dollar and fifty cents per day for the custody of a vessel, her tackle, apparel, and furniture, seized by any officer of the revenue, and seized, libeled, and prosecuted for forfeiture.

Rule 50. — Marshal's Percentage for the Custody of Goods, &c.

He shall be allowed for the custody of the goods so seized, on all sums not exceeding \$5,000, held in custody less than thirty days, two per cent; on all sums exceeding \$5,000, held in custody less than thirty days, one per cent; on all sums not exceeding \$5,000, held in custody over thirty days, two and a half per cent; and on all sums exceeding \$5,000, held in custody over thirty days, one and a half per cent; except on attachment of specie, bullion, jewelry, or precious stones, the allowance to the marshal shall be specifically fixed by the court, having regard to the special circumstances of each case.

Rule 51. — Marshal's Allowances on Other Attachments.

The marshal may have like allowances taxed on all other attachments of property, in causes of civil and admiralty jurisdiction.

Rule 52. — Marshal's Allowances subject to Alteration.

All the above allowances are, however, subject to alteration by the court on motion, due notice thereof being given the opposite party, and adequate cause being shown therefor.

Rule 53. — Marshal's Allowance how computed.

The allowance to the marshal, above appointed, for the custody of goods, shall be computed upon the gross proceeds, in case of sale; or upon the appraised or agreed value if bonded; but the marshal, in case of an agreed valuation between the parties, not assented to by him, may have an appraisal in the usual mode.

Rule 54. — Attachments, with Instructions as to Amount.

If attachments *in rem* are accompanied by written instructions to the marshal, specifying the sum demanded (adding thereto \$250 to cover costs) he shall, as in case of executions, only arrest so much of the goods or effects to be seized (when severable) as shall be sufficient to satisfy such amounts.

Rule 55. — Motion for Greater or Better Security.

In all cases of stipulations, in civil and admiralty causes, any party having an interest in the subject-matter may move the court, on special

cause shown, for greater or better security, giving the opposite party two days' notice thereof, unless a shorter time is allowed by order of the judge.

Rule 56. — Personal Service. Contumacy and Default.

After a citation or monition, or warrant of arrest, in suits *in personam*, returned "served personally," if the defendant do not appear at the return day, he shall be deemed in contumacy and in default, and the libellant may take order for enforcement of the stipulation (in case any is given), or to compel the defendant's appearance, according to the course of admiralty proceedings; or, at his option, may proceed to hearing *ex parte* and obtain the proper decree, unless the court, for good cause, shall allow the defendant further time.

Rule 57. — Discharge of Stipulators.

In suits *in personam*, stipulators to the marshal on the arrest of the defendant may be discharged from their stipulation, on the surrender of the principal, as in cases of bail at law.

Rule 58. — Stipulators, &c., may surrender their Principal.

So, also, stipulators or *fide-jussores*, after the return of the attachment, in suits *in personam*, may surrender their principal, or he may surrender himself, in discharge of the stipulation, as in cases of special bail at law: except in respect to costs in this court, or any other court to which the cause may be appealed.

Rule 59. — Stipulations. Principal and Sureties. What to contain.

All stipulations in causes civil and maritime shall be executed by the principal party (if within the district), and at least one surety resident therein, and shall contain the consent of the stipulators that, in case of default or contumacy on the part of the principal or sureties, execution to the amount named in such stipulation may issue against the goods, chattels, and lands of the stipulators. The court will modify the execution as to the time it may stay and the amount to be collected, according to the equity of the case. Non-resident parties must supply at least two sureties.

Rule 60.—Seizure. Appraisement. Bonding.

In case of seizure of property in behalf of the United States, an appraisement for the purpose of bonding the same may be had by any party in interest, on giving one day's previous notice of motion before the court, or the judge in vacation, for the appointment of appraisers.

Rule 61.—Motion instanter, for Appraisement.

If the parties or their proctors and the district attorney are present in court, such motion may be made instanter, after seizure and without previous notice.

Rule 62.—Order of Course for Appraisement.

Orders for the appraisement of property under arrest at the suit of an individual may be entered of course by the clerk at the instance of any party interested therein, or upon filing the consent of the proctors for the respective parties.

Rule 63.—Appraiser. Appointment.

Only one appraiser is to be appointed in suits by individuals, unless otherwise specially ordered by the judge; and if the respective parties do not agree in writing upon the appraiser to be appointed, the clerk shall forthwith name him, either party having a right of appeal instanter to the judge from such nomination, for adequate cause.

Rule 64.—Appraisers. Whom to be appointed.

In case vessels, their tackle or appurtenances, are to be appraised, the clerk shall name a warden of the port, and, in case of merchandise, an appraiser or an assistant appraiser of the custom-house, as appraiser.

Rule 65.—Payment into Court, or Stipulation in Actions in Rem for Sums Certain.

In suits *in rem* for seamen's wages, and in all other actions *in rem* for sums certain, the claimant or respondent may pay into court the amount sworn to be due in the libel, with interest computed thereon, from the time it was due, to the stated term next succeeding the return day of the attachment, and the costs of the officers of court already

accrued, together with the sum of \$250 to cover further costs, &c. ; or, at his option, may give stipulation to pay such sworn amount, with interest, costs, and damages (first paying into court the costs of the officers of court already accrued), and, in either case, may thereupon have an order entered instanter, for delivery of the property arrested, without having the same appraised.

Rule 66. — Appraisers to be sworn and to give Notice of Appraisement.

Appraisers, before executing their trust, shall be sworn or affirmed to its faithful discharge, before the clerk or his deputy (who are hereby appointed commissioners for the qualification of appraisers), and shall give one day's previous notice of the time and place of making the appraisement, by affixing the same in a conspicuous place adjacent to the United States court rooms, and where the marshal usually affixes his notices, to the end that all persons concerned may be informed thereof; and the appraisement, when made, shall be returned to the clerk's office.

Rule 67. — Compensation of Appraisers.

Appraisers acting under an order of this court shall be severally entitled to three dollars for each day necessarily employed in making the appraisement, to be paid by the party at whose instance the same shall be ordered.

Rule 68. — Costs of Officers to be paid into Court.

No vessels, goods, wares, or merchandise in the custody of the marshal shall be released from detention, upon appraisement and surety, until the costs and charges of the officers of this court, so far as the same shall have accrued, shall first be paid into court by the party at whose instance the appraisement shall take place, to abide the decision of the court in respect to such costs.

Rule 69. — Order of Court for Delivery of Property.

No property in the custody of any officer of the court shall be delivered up without the order of the court; but such order may be entered of course by the clerk, on filing a written consent thereto by the proctor in whose behalf it is detained; and also after appraisement and bond duly executed.

Rule 70.—Possessory and Petitory Suit. Appraisement. Stipulation.

If, in possessory suits, after decrees for either party, the other shall make application to the court for a proceeding in a petitory suit, and file the proper stipulation, the property shall not be delivered over to the prevailing party until after an appraisement made, nor until he shall give a stipulation with sureties to restore the same property without waste, in case his adversary shall prevail in the petitory suit, and also to abide as well all interlocutory orders and decrees, as the final sentence and decree of the District Court, and, on appeal, of the appellate court.

Rule 71.—Interest on Judgment or Decree.

In all cases where a judgment or decree is entered on a bond or stipulation filed with the clerk for the appraised or agreed value of any property libeled in this court, the clerk shall receive, in addition to the amount of the bond, interest at the rate of six per cent per annum, for the time which shall intervene between the entry of the judgment or date of the stipulation, and the day when the money shall be paid into court.

Rule 72.—Tender. Deposit in Court.

A tender *inter partes* shall be of no avail on defense, or in discharge of costs, unless, on suit brought, and before answer, plea, or claim filed, the same tender is deposited in court, to abide the order or decree to be made in the matter.

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Rule 73.—Tender to include Costs.

When tender is first made after suit brought, it must include taxable costs then accrued.

Rule 74.—Intervention. Proof of Interest.

No third party can intervene by claim, without proof of a subsisting interest in the subject-matter of the claim. This proof may, in the first instance, be the oath of the claimant, but subject to denial and disproof on the part of the libellant, on issue thereto or on summary petition.

Rule 75. — Double Pleas, Exceptions, &c., without Leave.

Double pleas, or exceptions, replications to pleas, triplications or rejoinders, &c., may be filed without previous leave of the court, the pleading of several matters being restricted to cases in which the matters are distinct.

Rule 76. — Defense by Answer or Claim.

Defense may be made by answer or claim, of matters of law or fact, without the employment of exceptions or special pleas usual in causes of civil and maritime jurisdiction, other than exceptions to the competency of the party or the process, or other matter of abatement.

Rule 77. — Bar set up by Answer or Claim. Costs.

If matter of bar at law to the libel is set up by answer or claim, and allowed by the court, no costs shall be taxed for any other part of the answer or claim than that stating such bar.

Rule 78. — Answer alleging a Bar to Whole Libel.

When the answer alleges a bar in law to the whole libel, it may be treated as a plea, and set down for hearing, without filing a replication other than to such bar, or going into proofs upon the issues in fact.

Rule 79. — Intervention. Costs.

Where a party not required to answer intervenes by claim and answer, costs will be taxed for the claims only.

Rule 80. — Exceptive Allegation or Disclaimer, in Action in Rem.

When an answer is required, in a suit *in rem*, of a party having no interest in the subject-matter, he may file an exceptive allegation or disclaimer, and notice the same instant for hearing. If the decree of the court is in affirmance of his plea, he shall be discharged the action with costs.

Rule 81. — Respondent improperly joined in Action in Personam.

One improperly joined as defendant, in an action *in personam*, may have a decree of discharge in the same manner; provided it is made

satisfactorily to appear to the court that he can give material testimony as a witness in the cause.

Rule 82. — Claim. General Issue.

When the claim is in derogation of the right set up by the libel, it may form a general issue therewith, by denying "that the libellant is entitled to the remedy and relief in the premises sought by him," without traversing or admitting the several articles of the libel.

Rule 83. — General Issue by Answer.

A general issue may be taken by answer, in like manner, when the answer is not required to be under oath.

Rule 84. — Libel contested affirmatively.

So, also, the libel may be contested affirmatively, by a general issue instead of a formal demurrer.

Rule 85. — General Issue in Open Court.

When a general issue is taken to the libel, in open court, on the return day of process, either party may have the cause placed upon the calendar instanter, and it may be called in its place for proofs, without other notice.

Rule 86. — Proceedings.

Each party is entitled to like proceedings in such case as if the cause had been noticed by each pursuant to the usual practice.

Rule 87. — Sworn Answer as Evidence.

A sworn answer is not to be deemed higher evidence than the libel or information to which it responds, unless made so by the act of the promovent. An answer need not be put in under oath, unless so required by a sworn libel, or one filed by the United States.

Rule 88. — Sworn Answer. When Matter deemed admitted.

The matter set up by a sworn answer responsive to the allegations or interrogatories of the libel shall be deemed admitted on the part

of the libellant, unless, within four days from the time the answer is perfected, or from the expiration of the time allowed for excepting thereto, replication is filed, or a written notice served on the proctor of the respondent, that, on the trial of the cause, proof will be offered on the part of the libellant, in opposition to the allegations of the answer. No replication need be filed for any other purpose, to an answer taking an issue in fact upon the allegation of the libel.

Rule 89. — Time for filing Claim or Answer.

A claim or answer may be put in and filed at any time after the service of process and before defaults entered; and when it shall be put in at any other time than on making proclamation, notice of the time of filing it shall be given the libellant; otherwise, he shall not be bound to regard it.

Rule 90. — Separate Answers or Claims. Costs.

If separate answers or claims are put in by the same proctor, or by different proctors being connected in business, all costs thereby unnecessarily incurred shall be disallowed, on taxation.

Rule 91. — Answer or Claim by the United States.

An answer or claim on the part of the United States is to be put in without oath, by the District Attorney, and is not subject to exception for insufficiency.

Rule 92. — Bailable Process in Personam. Bail Stipulation.

In the case of bailable process *in personam*, unless the defendant appear and put in bail stipulation according to the rules of the court, his claim or answer may be treated as a nullity and his defaults be entered. An answer in such case shall be deemed filed from the time bail becomes perfected.

Rule 93. — Verifying Claim, Answer, or Libel, by Proctor, &c.

On due proof that a claimant or respondent is absent from the United States, or resides out of the district, and more than one hundred miles from the city of New York, a claim or answer to a libel may be sworn to by a proctor or attorney in fact, in behalf of such

party; and if, thereupon, the libellant, by written notice to the respondent, demands a personal answer verified by the oath of the party, proceedings shall stay a reasonable time to enable such answer to be taken by commission or *dedimus potestatem*. The provisions of this rule may also be applied to the verification of a libel by the oath of a proctor or attorney in fact.

Rule 94. — Exception to Libel, for Multifariousness, Ambiguity, &c.

The defendant may, on the return day of process, and before answering, demurring, or pleading, file an exception to the libel, that it is multifarious or ambiguous, or without plain allegations upon which issue can be taken; and if it be adjudged by the court insufficient for any of these causes, and be not amended by the libellant within two days thereafter, it shall be dismissed with costs.

Rule 95. — Proceedings upon such Exceptions.

Proceedings upon such exceptions shall conform to those on exceptions to answers or other pleadings.

Rule 96. — Exceptions to Answer or Claim.

The libellant may, within four days from the filing of the answer or claim, file exceptions thereto, for insufficiency, irrelevancy or scandal, which exceptions shall briefly and clearly specify the parts excepted to, by the line and page of the papers in the clerk's office; whereupon the party answering or claiming shall, in four days, either give notice to the libellant of his submitting to the exceptions, or set down the exceptions for hearing, and give four days' notice thereof, for the earliest day of jurisdiction afterwards. In default whereof, the like order may be entered as if the exceptions had been allowed by the court.

Rule 97. — Further Answer.

If a party submit to exceptions for insufficiency, he shall answer further within four days after notice of his submitting. If the exceptions are allowed on hearing, he shall answer further within such time as the court shall direct; and, if the hearing of the exceptions shall not be duly brought on, or the further answer duly put in, the claim or answer excepted to shall be treated as a nullity, and the default of the party be entered.

Rule 98. — Striking out Irrelevant Matter from Claim or Answer.

If exceptions for irrelevancy be submitted to, or be allowed by the court, or the hearing be not duly brought on by the respondent, the matter excepted to shall be struck out of the claim or answer by the clerk.

Rule 99. — Interrogatories by Either Party.

Either party may propound interrogatories to the other, within four days from the putting in of the claim, or answer, or other pleading, and the perfecting of the same, if excepted to.

Rule 100. — Interrogatories. Service. Allowance. Filing. Answer.

A copy of the interrogatories shall be served on the party for whom the same are intended, or his proctor, if one be employed; and, if he object thereto, he shall notify the party serving the same, who shall, on due notice, submit the same to the judge for his allowance. The interrogatories allowed shall be filed with the clerk, and notice thereof be given, and the party shall file his answer thereto in ten days after such notice; in default whereof, if libellant, the libel shall be dismissed; if claimant or defendant, the claim or answer shall be treated as a nullity, and default may be entered against such party.

Rule 101. — Exceptions to Answers. Answers by the United States.

Answers to interrogatories may be excepted to in the same manner as answers or claims put in by a defendant, and shall in all respects be subject to the provisions of the rules in relation to exceptions; and if the libellant making answers shall not perfect the same after exception, the libel shall be dismissed for want of prosecution. But this rule and the preceding one shall not in any case be deemed to require answers to interrogatories on the part of the United States, in suits brought in their behalf.

Rule 102. — Oath of Calumny.

The oath of calumny shall not be required of any party, in any stage of a cause.

Rule 103. — Consolidating Suits.

Suits may be joined or consolidated upon the same principle as in the practice of the court at common law.

Rule 104. — Test Case.

When various actions are pending, all resting upon the same matter of right or defense, the court, by order, at its discretion, will compel the parties to abide by the decision rendered in one case, and will enter a decree in the other causes conformably thereto, although there be no common interest between the parties.

Rule 105. — Commissions for taking Testimony.

Commissions for taking testimony, if not sued out pursuant to the rules of the Circuit Court, shall be moved for in four days after the claim or answer is filed and perfected (if the same shall have been excepted to); but, if interrogatories shall be propounded for the other party, by the party who moves for a commission, he shall have four days for moving after the answers to the interrogatories shall be perfected; otherwise, such commissions shall not operate to stay proceedings; but, on a proper case shown, application for a commission may be made at any time after the action is commenced, and before issue joined, or after a default or interlocutory decree.

Rule 106. — Affidavit on Motion for Commission.

Affidavits on which a motion for a commission is made shall specify the facts expected to be proved, and the shortest time within which the party believes the testimony may be taken and the commission returned.

Rule 107. — Admission instead of Testimony.

A commission will not be allowed to stay proceedings if the opposite party admits in writing that the witnesses will depose to the facts stated in such affidavit; such affidavit, with the admission, may be read on the trial or hearing, and will have the same effect as a deposition to those facts by the witness or witnesses named.

Rule 108. — Motion for Commission.

The motion may be noticed and made at term before the court, or in vacation before the judge out of court, and only one commissioner shall be named, unless special cause is shown for appointing a greater number, nor will costs be taxed for the services of more than one, except where both parties require a greater number.

Rule 109. — Interrogatories to Witnesses.

Interrogatories for the direct and cross-examination, in case the parties disagree respecting them, shall be presented to the judge for his allowance at one time. And one day's notice of such reference shall be given by the party objecting to the opposite interrogatories.

Rule 110. — Cross-Interrogatories.

Cross-interrogatories shall be served within four days after the direct have been received, or they shall be regarded as assented to, and, if no notice of reference to the judge is given within five days after both direct and cross-interrogatories have been served, each party shall be deemed to have assented to the interrogatories served.

Rule 111. — Interrogatories, Direct and Cross.

The interrogatories, direct and cross, as agreed to by the parties, or settled by the judge, shall be annexed to the commission.

Rule 112. — Directions to accompany Commission.

Directions as to the execution and return of the commission, signed by the clerk and the proctor of the party moving it, or of both parties, if both unite in the commission, or if both propose interrogatories, shall accompany the commission.

Rule 113. — Depositions. Forwarding, filing, and Notice. Objections.

Depositions taken under commissions, or otherwise, shall be forwarded to the clerk immediately after they are taken, and be filed on their return to the clerk's office, in term or vacation, and notice thereof shall be forthwith given by the party filing them to the proctor of the opposite party. And all objections to the form or manner in which

they were taken or returned shall be deemed waived, unless such objection shall be specified in writing in four days after the same are opened, unless further time shall be granted by the judge.

Rule 114. — Order to open Deposition, &c.

In suits between individuals, either party may at any time after the commissions or depositions are deposited with the clerk, enter an order of course, as of a special sessions, if in vacation, to open the same and deliver copies thereof.

Rule 115. — Order to open Depositions, on Consent or Motion.

In suits on seizures, in which the United States are a party, such order may be entered on the written consent of the proctors or attorneys of the respective parties, or on motion to the court at a stated or special session.

Rule 116. — Objecting to Competency or Relevancy of Evidence.

Opening such commissions or depositions shall not preclude either party from objecting to the competency or relevancy of the evidence when offered on trial.

Rule 117. — Exceptive Allegations to Credibility or Competency of Witnesses.

Exceptive allegations to the credibility or competency of witnesses examined on deposition or commission may be filed within four days after the depositions or commissions are opened at the clerk's office, and notice shall be given forthwith of such exceptions.

Rule 118. — Testimony impeaching or supporting.

Testimony impeaching or supporting the witnesses may, in such case, be given by the parties respectively, on the hearing of the cause, and may be taken in the same manner as proofs in chief.

Rule 119. — Depositions in Perpetuum.

Depositions *in perpetuum rei memoriam*, to be used in this court, may be taken under a *dedimus potestatem*, or by an officer authorized by

act of Congress to take depositions *de bene esse*, to be used in the courts of the United States, in like cases and by like proceedings as are now authorized by the Supreme Court of the State of New York.

Rule 120. — Notices of Trial, Argument, or Hearing.

Notices of trial, argument, or hearing, may be for any day in term, the court being then sitting (including days to which the court may stand adjourned) upon a sufficient excuse for not giving notice for the first day of the term.

Rule 121. — Service of Notice of Trial, Hearing, &c.

In all issues brought to trial, argument, or hearing, except as provided in these Rules, four days' previous notice shall be served on the attorney or proctor of the opposite party, when the attorney or proctor resides in this city; in all other cases, posting such notice conspicuously in the clerk's office shall be a sufficient service.

Rule 122. — Note of Issue to be served on Clerk, with Notice of Hearing.

A note of the pleadings and of the date of the issue shall be served on the clerk, with a notice of the hearing, four days before the time of hearing, and such notices shall also specify the pleadings, and whatever papers or documents in his office shall be required by the parties to be produced by the clerk at the trial.

Rule 123. — Notice of Hearing by Respondent or Claimant.

So soon as issue is joined, the respondent or claimant may notice the cause for hearing on his part and be thereupon entitled to a decree dismissing the same, with costs, or such other decree as the case may demand, unless the libellant shall also notice the cause for the same time, and proceed to trial or hearing, or obtain a continuance by order of the court, on proper cause shown.

Rule 124. — Viva Voce Testimony in Open Court.

When either party shall require *viva voce* testimony, given in open court, to be taken down by the clerk pursuant to the act of Congress, it shall be taken in the same manner as in jury trials on common-law issues, and not *verbatim* as in depositions *de bene esse*.

Rule 125. — Notes of the Judge.

The notes of the judge may, by assent of parties, be used as if taken down by the clerk.

Rule 126. — Proceedings to diminish, vary, or enlarge the Minutes.

Each party desiring to diminish, vary, or enlarge the minutes of proofs taken by the clerk or judge, may, within two days after the trial, serve a statement of proofs on the proctor of the opposite party; and such statement, if assented to, or if no amendments are proposed thereto within two days thereafter, by such proctor, shall be regarded the true minutes of the testimony given, and the notes of the judge or clerk be corrected in conformity thereto.

Rule 127. — Amendments to the Minutes referred to the Judge.

If amendments are proposed and the parties do not agree therein, the statements and amendments shall be forthwith referred to the judge, and he shall settle or determine how the facts are, and the statement thus settled or adjusted shall be filed as the true minutes of the testimony given.

Rule 128. — Reference to Clerk to compute.

In cases of demands arising not *ex delicto*, on a decree in favor of the libellant by default or on hearing, it shall be referred to the clerk to compute and ascertain the amount due the libellant, but reference may also be made in cases of tort, or on allegations of incidental or consequential damages, if desired by either party.

Rule 129. — Reference to Assessors.

In case of the absence of the clerk, or his incompetency, from interest or otherwise, or upon any sufficient cause shown, such reference may be made to assessors, or otherwise, according to the course and custom of courts of civil and admiralty jurisdiction.

Rule 130. — Pleadings and Proofs may be used on Reference.

On such reference, either party may produce and use the pleadings and proofs filed in the cause or heard in court, and other competent proofs pertinent to the matter of reference.

Rule 131. — Time for completing Reference.

The clerk shall allow neither party longer than ten days from the order of reference to complete the proofs thereon, without the special order of the judge.

Rule 132. — Report of Testimony before the Clerk.

At the instance of either party, the clerk shall report the additional testimony received by him and the offer of testimony rejected (if any) by him.

Rule 133. — Exceptions to Clerk's Report.

Either party may except to the clerk's report and set down the exceptions for hearing, on two days' notice, at the first stated or special sessions after the report is filed.

Rule 134. — Decree confirming Report, unless, &c.

Upon the coming in of the report, a decree of confirmation may be entered, on motion, without notice, unless otherwise ordered by the court, or the report shall be excepted to; and, in the latter case, the exception shall be overruled or held abandoned, unless brought to a hearing the first stated or special sessions of the court for which it can be noticed.

Rule 135. — Motion to dismiss Libel for Want of Prosecution.

If the libellant takes no proceedings upon the report within four days after the filing thereof in open court, the respondent may move the court to dismiss the libel, for want of due prosecution.

Rule 136. — Dismissing Libel for Delay.

If the promovent in a libel or information neglects to proceed in the cause with the dispatch the course of the court admits, the respondent or claimant may have the libel or information dismissed on motion, unless the delay is by order of the judge or the act of the respondent or claimant.

Rule 137. — Notice of Application to dismiss the Action.

Four days' notice shall be given of the application to dismiss the action, and a copy of an affidavit, or a certificate of the clerk, that no proceedings have been taken, be served at the same time.

Rule 138. — Special Session of the Court.

A special session of the court (besides the sittings on Tuesday each week) may be opened at any time *instantly*, on the allowance of the judge, for hearing and disposing of special motions, arguments on questions of law, and also for taking proofs, or hearing admiralty and maritime or revenue causes, and rendering interlocutory or final decrees therein.

Rule 139. — Proceedings at Special Sessions.

No party shall be compelled to take or meet proceedings at a special sessions (without the order of the judge previously served on him), in other than civil causes of admiralty and maritime jurisdiction.

Rule 140. — Guardian ad Litem.

A guardian *ad litem* will be appointed, on a petition, verified by oath, stating a proper cause for such appointment; and the guardian shall give stipulations for costs, &c., the same as if he was personally the party in interest.

Rule 141. — Prochein Ami.

Infants may sue by *prochein ami*, to be first approved by the court; the *prochein ami* to give stipulations and be responsible for costs, in the same manner as the infant would be if of full age.

Rule 142. — In Forma Pauperis.

Suits can only be prosecuted or defended in *forma pauperis* by express allowance of the court. In such case, the pauper will be discharged of all stipulations or liabilities for costs.

Rule 143. — Inability to comply with Usual Stipulations.

But the court, on satisfactory proof of the inability of a party to comply with the usual stipulations in a cause, may mitigate and modify such stipulations conformably to the equities or exigencies of the case.

Rule 144. — Proceedings against Sureties in Stipulations.

Where proceedings on a decree shall not be stayed by an appeal, and the decree shall not be fulfilled or satisfied in ten days after notice to the proctor of the party against whom it shall be rendered, it shall be of course to enter an order that the sureties of such party cause the engagement of their stipulation to be performed, or show cause in four days, or on the first day of jurisdiction afterwards, why execution should not issue against them, their lands, goods, and chattels, according to their stipulation, and, if no cause be then shown, due service having been made on the proctor of the party, a summary decree shall be rendered against them on their stipulations, and execution issue; but the same may be discharged on the performance of the decree and payment of all costs.

Rule 145. — Final Process, after Decree.

A party obtaining a decree of the court may, at his election, have, for the execution thereof, like process as is now used in this state for like purposes, except that of personal attachment, as for a contempt of court.

Rule 146. — Fieri Facias, or Venditioni Exponas.

The writ of *fieri facias* or *venditioni exponas* is adopted as final process, in this court, in all cases for the sale of property; and the proceedings thereon, in admiralty cases, shall be conformable to those on the common-law side of the court.

Rule 147. — Death of a Party, or Change of Interest.

Whenever, from the death of any of the parties, or changes of interest in the suit, defect in the pleadings or proceedings, or otherwise, new parties to the suit are necessary, the persons required to be made parties may be made such either by a petition on their part or by the adverse party.

Rule 148. — Petition for making New Parties.

In either mode it shall be sufficient to allege briefly the prayer of the original libel, the several proceedings in the cause, and date thereof, and to pray that such persons required to be made parties in the suit may be made such parties.

Rule 149. — Order on Petition for New Parties.

On service of a copy of such petition and of notice of the presenting thereof, such order shall be made for the further proceeding in the cause as shall be proper for its speedy and convenient prosecution as to such new parties, and the same stipulations and security shall, in all such cases, be required and given, as in cases of persons becoming originally parties to a suit.

Rule 150. — Appeal. Final Decree.

A party shall not be held to enter his appeal from any decree or order of the court as final, unless the same is in a condition to be executed against him without further proceedings therein in court.

Rule 151. — Appeal within Ten Days. Notice.

Ten days from the time of rendering the decree shall be allowed to enter an appeal, within which time the decree shall not be executed. A brief notice in writing to the clerk and opposite proctor, that the party appeals in the cause, shall be a sufficient entry of the appeal, without any petition to the court for leave to enter the same.

Rule 152. — Appeal. Security for Damages and Costs.

When an appeal shall be entered, the appellant shall, within ten days thereafter, give security for damages and costs; and, if security shall not be given within that time, the decree may be executed as if there had been no appeal, unless further time be allowed by the court.

Rule 153. — Notice by Appellant of Persons proposed as Sureties.

The appellant shall give four days notice to the adverse party, or his proctor, of the person or persons proposed as his sureties, with their additions and descriptions, and of the time and place of giving the stipulation.

Rule 154. — Transcript of Record on Appeal.

When an appeal shall be entered, the appellant shall cause the proceedings of the court, required by law to be transmitted to the Circuit Court, to be transcribed for that purpose within thirty days after the appeal shall be entered in this court; and, in default thereof, the decree shall be executed as if there had been no appeal, unless the court shall, upon special motion of the appellant, otherwise order.

Rule 155. — Rehearing.

A rehearing will not be granted in any matter in which a decree has been rendered, unless application is made at the term when the decree is pronounced, or there is a stay of proceedings by order of the judge.

Rule 156. — Libel of Review.

No libel of review will be entertained in cases subject to appeal, nor unless filed before the enrollment of the decree or return of final process issued in the cause.

Rule 157. — Marshal to pay over Moneys and return Account of Property sold. His Charges.

When any moneys shall come to the hands of the marshal under or by virtue of any order or process of the court, he shall forthwith pay over the gross amount thereof to the clerk, with a bill of his charges thereon, and a statement of the time of the receipt of the moneys by him, and upon the filing of such statements, and the taxation of such charges, the same shall be paid to the marshal out of such moneys; and the general account of all property, sold under the order or decree of this court, shall be returned by the marshal and filed in the clerk's office, with the execution or other process under which the sale was made.

Rule 158. — Taxation of Costs.

All bills of costs and of charges to be paid under any order or decree of this court shall be taxed and filed with the clerk before payment thereof; and, if the same shall include charges for disbursements other than to the officers of the court, the proper and genuine vouchers, or an affidavit therefor (in case of loss of vouchers), shall be exhibited and

filed, and if such bill shall be taxed without four days' notice to all parties concerned, they shall be subject to a retaxation of course, on application by any such party not having had notice, and at the charge of the party obtaining such taxation.

Rule 159. — Clerk's Authority.

The clerk is authorized to tax or certify bill of costs, and to sign judgments, and also take acknowledgments of the satisfaction of judgments, and all affidavits and oaths out of court, as in open court, in all cases where the same are not required by law to be taken in open court.

Rule 160. — Deputies or Chief Clerks.

The deputies or chief clerks of the clerk of this court, not exceeding two in number, and named and designated by an appointment filed in the office of said clerk, are each authorized to sign judgments, to tax and certify all bills of costs in this court, other than those of the clerk, and also to affix the seal of the court and certify proceedings or papers in the name of the clerk, in all other cases than exemplifications of the records or files of the court, and to perform all duties appertaining to the clerk by the appointment of the court, or the course of practice, which are not specifically appointed by statute to be performed by the clerk.

Rule 161. — Clerk's Further Authority.

The clerk is authorized to enter satisfaction of record of any judgment rendered in this court in behalf of the United States, on filing acknowledgment of satisfaction of the same duly made by the district attorney.

Rule 162. — Rules of Course, &c.

All rules to which a party is entitled of course, or which are moved for upon the written consent of the parties, may be entered by the clerk in vacation, without the mandate of the judge, and be entitled as of a special court held on that day.

Rule 163. — Admission of Attorneys, Proctors, Counselors, and Advocates.

Proctors of any Circuit or District Court of the United States, and attorneys of the Supreme Court of this State, and solicitors of the Court

of Chancery, may be admitted attorneys and proctors of this court, and counselors of the said Supreme Court and Court of Chancery, and counselors and advocates of said Circuit or District Courts, may be admitted counselors and advocates of this court, of course, upon taking the oaths prescribed by the Constitution and laws of the United States.

Rule 164. — Summary Proceedings in Admiralty.

In admiralty and maritime causes, wherein the matter in demand does not exceed fifty dollars, the proceedings for the recovery thereof may be summary.

Rule 165. — Petition, &c., instead of Libel.

Instead of filing a libel, the promovent, in suits by individuals, may, by short petition, state the matter of his demand, and the amount or value thereof, or present an account stated, or a bill of charges by items, on filing either of which process may issue, as on the filing of a libel in ordinary cases.

Rule 166. — Petition when Admiralty Process is ordered by Judge, &c.

The same petition or statement used on application for a summons pursuant to the act of Congress of July 20, 1799, sec. 6, shall, when admiralty process is ordered by the judge or justice of the peace, be filed, and may stand and be proceeded upon in lieu of the libel in form.

Rule 167. — Contest of Petition by Intervenors.

Any party intervening may contest the petition or demand orally or in writing, by general denial or affirmance, or file a plea in bar, or answer, or claim.

Rule 168. — Costs of Plea, Answer, or Claim.

No costs shall be taxed the defendant for any plea, answer, or claim, other than a general issue to the actor's demand, unless an answer on oath be demanded.

Rule 169. — Interrogatories. Answer on Oath.

Either party may file interrogatories to be propounded to his adversary, which shall be answered on oath.

Rule 170. — Monition, Citation, or Attachment, when Returnable. Calendar. Continuance.

The monition, or citation, or attachment, may be made returnable the first day of a stated or special session of court next succeeding the service thereof, at least three days intervening between the service and return of process *in rem*, in suits by individuals, and fourteen in suits by the United States; and, on the return of process, in open court, duly served, the cause may be put *instantly* upon the calendar, and either party, without other notice, may proceed therein to proofs and hearing; and the party obtaining the continuance of the cause, if *in rem*, shall bear all expenses taxed for keeping the thing attached intermediate such continuance and the final hearing.

Rule 171. — Notices for Publication. Contents. Printer's Charges.

The notices to be published, in suits by individuals, need contain only the title of the suit, the cause of action, the amount demanded, and the day and place of the return of the monition, and be subscribed with the name of the marshal and proctor of the libellant. No more than the usual printer's charge for advertisements of like size shall be taxed for the publication.

Rule 172. — Monition, when Goods under Seizure.

In summary proceedings *in rem*, in behalf of the United States, when the goods are under seizure by the collector and in his possession, the clerk, at the instance of the district attorney, may omit the attachment clause in the monition issued.

Rule 173. — Return that the Goods are in Custody of the Collector.

If the monition also contains an attachment in such cases, and the marshal returns that the goods, &c., are in the custody of the collector, he shall stand acquitted of all responsibility for their safe keeping or production to answer the decree.

Rule 174. — Service of Monition on Collector and Owner.

In such case, the service of the monition shall be by leaving a copy, or notice thereof, with the collector or person having the goods in keeping, and also making like service on the owner, or his agent, if known to the marshal, and resident in the city.

Rule 175. — Costs to District Attorney, Proctor, &c.

The costs to be taxed the district attorney, proctor, and advocate on either side, in a summary cause, shall not exceed twelve dollars.

Rule 176. — Fees of Witnesses, and for serving Subpœna. Attachment of Witness.

Fees shall not be taxed for more than one witness to prove the same facts, unless it appears that the witness was impeached or his testimony contradicted. No charges for serving writs of subpœna shall be taxed against the opposite party, when the writ is executed by the marshal. If a witness does not attend after regular summons, proceedings to attachment may be had against him, without the service of a writ of subpœna.

Rule 177. — Limitation of Rules 165 to 176 inclusive.

The provisions of the twelve preceding rules are limited to those cases of admiralty and maritime jurisdiction in which no appeal lies from this court to the Circuit Court.

Rule 178. — Summary Proceedings, how governed.

Summary proceedings, in all respects not specified in the preceding rules, are to be governed by the general course of procedure of the court.

PRACTICE IN INFORMATIONS.

Rule 179. — Form of Informations.

Informations on seizures upon land or water are to be drawn in a plain and concise form, only referring to, without reciting, statutes or sections of statutes at large. The information should set forth the gravamen of the suit by plain and issuable allegation; and, when *in rem*, the property demanded as forfeited is to be specified, together with the alleged cause of forfeiture. Informations are subject to the same general rules, as to their structure and amendment, as ordinary libels.

Rule 180. — Joinder of Causes in Informations.

Proceedings *in rem* for a forfeiture, and *in personam* for an offense, fine, penalty, or debt, may be joined in one information, when having relation to the same transaction.

Rule 181.—Process on filing Informations.

On filing an information *in personam* or *in rem*, the clerk shall issue process thereon, corresponding as nearly as may be with that employed in the instance court of admiralty in similar cases. But process *in personam* may be, in the first instance, a *capias* or attachment against goods to compel an appearance, or a monition, at the election of the complainant.

Rule 182. — Bail on Proceedings by Information.

No party shall be held to bail on an information *in personam* without the mandate of the judge, except where bail is required or authorized by statute.

Rule 183. — Rules applicable to Informations.

All rules applicable to the service of, or proceedings in relation to, process in penary causes in admiralty, shall equally apply to process on informations.

Rule 184. — Multifarious or Ambiguous Information.

If the information filed is multifarious or ambiguous, or does not supply plain allegations upon which issue can be taken, or a distinct reference to the statute upon which it is founded, the defendant or claimer may move the court to have it reformed, giving two days' previous notice, together with a specification of the exceptive parts, to the district attorney or proctor in whose name it is filed. It may be amended of course in conformity to such notice; if not reformed within two days after pronounced defective by the court, the defendant may take an order of discharge from the action.

Rule 185. — Amendments of Informations. Costs.

Amendments may be had to informations in any stage of the cause; but, if after an issue is formed between the parties, it shall be on payment of all costs which may have accrued by means of the amendment or the defective pleading.

Rule 186. — Delivery on Bail. Sale of Perishable Articles.

In informations *in rem*, a delivery, on stipulation, of property seized, or a sale of perishable articles, may be had, as in case of proceedings in the instance court of admiralty.

Rule 187. — Claimant. Appearance, Claim, or Plea.

The claimer shall appear and interpose his claim or plea, on informations *in rem*, within the same time and in the same manner as in causes on the instance side of the court of admiralty; and shall appear and plead to informations *in personam* within the same time and in the same manner as in causes at common law; but no plea other than in abatement, the general issue, former recovery, pardon or remission of the offense, fine or forfeiture, shall be received.

Rule 188. — Traverse of Information.

Instead of a traverse of each separate cause of forfeiture alleged in the information, the defendant may plead, as a general issue to an information *in rem*, "that the several goods in the information mentioned did not, nor did any part thereof, become forfeited in manner and form as in the information in the behalf alleged."

Rule 189. — Putting in and justifying Bail.

Putting in and justifying bail on behalf of the defendants on arrest, and the proceedings to and on trial and execution where a trial by jury must be had, shall be the same as in cases of common-law jurisdiction.

COMMON-LAW PRACTICE.**Rule 190. — Process. Declaration. Judgment.**

Process commencing suits at common law, except on bail bonds, must be returnable at a stated term. In suits on obligations or agreements to pay money, damages may be claimed in the declaration, and judgment be taken beyond the amount stated in the writ.

Rule 191. — Amendment of Capias.

When the *capias* has been served on the real party intended, the plaintiff, before or after its return, may amend of course any error in the name of the party inserted in the process, giving the defendant notice of such amendment; and when the real name is not known, process may be issued against the person by a fictitious name.

Rule 192. — Service of Capias. Return. Rules and Orders.

When bail is not required, it shall be a sufficient service of the *capias*, or other mesne process *in personam*, for the marshal to show such process to the defendant, or offer to show it, and, at the same time, leave with him a true copy thereof; in which case, the marshal shall indorse his return "personally served." The same rules and orders may be taken on filing such return as if common bail had been filed, or the defendant had indorsed his appearance on such process.

Rule 193. — Bail.

Bail shall not be exacted, in actions of debt or informations on penal statutes, for a fine, penalty, or forfeiture, without the order of the judge indorsed on the process, except where otherwise provided by

statute. To obtain the order, it must be shown, for cause, that the defendant is a transient person, or that there is reason to believe he is about to depart out of the jurisdiction of the court.

Rule 194. — Suits in Behalf of the United States. — Bail.

In bailable suits in behalf of the United States, wherein the plaintiffs are entitled, by any statutory provisions, to have judgment entered at the return term of the writ, the district attorney may waive special bail, and file common bail, on the return of the writ, and proceed to judgment accordingly.

Rule 195. — Assignment of Bail Bond. Writ.

In the cases last specified, if the district attorney takes an assignment of the bail bond, the writ may be issued thereon the first day of term, and be made returnable the same day, or any subsequent day in term or vacation.

Rule 196. — Special Bail.

When special bail is required, it shall be put in and perfected on the return of the writ, in default whereof a rule may be entered *instanter*, that the marshal bring in the body of the defendant; but, in such case, if the defendant is arrested in this or the county of Kings, written notice of the intention to enter such rule shall be given the marshal two days previously, and six days if the defendant is arrested in any other county of the district.

Rule 197. — Proceedings as in Other Common-Law Actions.

All other proceedings in such cases shall be the same as in other common-law actions in this court.

Rule 198. — Assignment of Bail Bond. Excepting to Sufficiency.

In suits in which the United States shall be plaintiffs, or in which they shall be interested, though not plaintiffs, and in which the defendant shall be held to bail, the assignment of the bail bond, and the acceptance thereof by the plaintiff's attorney, shall not be deemed to preclude him from excepting to the sufficiency of the special bail; and the marshal shall become responsible for good bail in like manner as if the bail bond had not been assigned and accepted as aforesaid.

Rule 199. — Recognizance of Bail in Civil Suits.

In recognizance of bail in civil suits, the sum for which the suit is instituted shall be expressed in the bail piece, and in suits where the sum demanded exceeds \$10,000, two or more bail may justify for proportionate parts of such amount, in sums to be determined by the judge.

Rule 200. — Surrender in Discharge of Bail.

Bail desiring to surrender the principal, or the principal wishing to surrender himself in discharge of his bail, may give two days' notice in writing to the attorney of the plaintiff of the time and place of surrender.

Rule 201. — Committitur.

Two certified copies of the bail piece being produced to the judge, with proof of the due service of such notice, he will indorse on each a *committitur* of the principal to the custody of the marshal.

Rule 202. — Exoneretur.

On the written admission of the marshal, or due proof that the principal is in his custody under such *committitur*, and no sufficient cause being shown to the contrary, the judge will immediately thereupon order an *exoneretur* to be entered.

Rule 203. — Exoneretur and Discharge to be indorsed and entered.

Such order and certified copy of the bail piece being filed, the clerk shall indorse an *exoneretur* on the bail piece, and also enter in the registry of bail the discharge thereof. An *exoneretur* may also be entered upon filing the written consent of the plaintiff's attorney, without an order of the judge.

Rule 204. — Immediate Committitur without Notice.

An immediate *committitur*, before notice given, may be had, on proof, satisfactory to the judge, that the principal is about to depart the District, or that the bail cannot, with safety, await the expiration of such notice, before a surrender is made.

Rule 205. — Surrender of Principal, how to be made.

In such case, the surrender shall be made in conformity to the present practice of this court, and may be made on the bail bond, or by putting in special bail before the return day of the writ.

Rule 206. — Surrender when Defendant in Custody in Another District.

In case the defendant is held in custody out of this District in any jail, the use of which shall have been ceded to the United States for the custody of prisoners, a surrender to the custody of the marshal of the District in which such jail is situated may be made in the same manner as before designated ; but such surrender shall be at the request of the bail alone.

Rule 207. — Plea to be verified.

No plea shall be received in any suit instituted in this court upon a bond executed to the United States for the payment of duties, or against persons accountable for public money, or in any suit instituted upon a bail bond taken in consequence of such suit, unless such plea shall be accompanied by an affidavit of the truth of the matters in the said plea contained.

Rule 208. — Declaration. Plea. Continuance.

In suits in behalf of the United States, in which the plaintiffs are by statute entitled to judgment at the return term of the writ, the declaration may be filed in open court on the day the writ is returned ; and proper proceedings may be thereon taken for perfecting judgment *instantly*, unless a plea is filed and a continuance of the cause allowed by the court.

Rule 209. — Plea. Calendar. Continuance.

If the defendant pleads to any such suit, the District Attorney may have the cause placed on the calendar of the same term, and may, without other notice, bring the same to trial when called, unless, at the instance of the defendant, the court shall grant a continuance in the case.

Rule 210. — Judgment by Default in Vacation.

Judgments by default, in all cases in which the United States are plaintiffs or are interested, may be entered up at any time in vacation, as of the preceding term.

Rule 211. — Marshal, &c., not to become Bail.

The marshal, his deputies, and all other persons concerned in the service of any process of this court, are respectively prohibited from becoming bail to the arrest in any suit depending in this court, and also from becoming special bail in any suit, unless for the purpose of surrendering the defendant, in which case the surrender shall be made within eight days after special bail shall be put in.

Rule 212. — Order for Payment to Collector of Customs.

In cases where the collector of the customs is entitled to receive the moneys in court, the same, after deducting the costs, shall be paid him by the clerk, upon an order to be entered of course for that purpose.

Rule 213. — Commissions to examine Witnesses.

All commissions to examine witnesses shall be drawn and engrossed by the clerk, or shall be carefully examined and approved by him, and he shall be entitled to charge for the same as if drawn and engrossed by him.

Rule 214. — Clerk's Fees.

On filing every note of issue in common-law causes, and for all services not provided for by any law of the United States, the clerk shall be entitled to receive the same fees as are allowed at the time, in the courts of this State, for similar services, with the addition thereto allowed by the laws of the United States.

Rule 215. — Calendars.

The clerk shall, before the first day of every stated term, prepare two calendars, one for the use of the court and the other for the use of the bar, which calendars shall each be divided under two titles, the first containing the jury causes noticed for trial, with the usual addi-

tions contained in the notes of issue filed, and the second containing the titles of all admiralty suits and issues at law, with the usual additions contained in the notices of trial filed with the said clerk.

Rule 216. — Clerk prohibited from practicing.

The clerk is prohibited from practicing in this court, in all circumstances whatsoever.

Rule 217. — Bonds of Clerk and Marshal.

The bond required by law from the clerk shall be first recorded in a book to be kept in his office, and deposited in that bank in the city of New York in which moneys in court are deposited, deliverable, upon the order of the court, to such person as the court may designate. The marshal's bond shall be filed and recorded in the clerk's office.

Rule 218. — Moneys to be deposited in Bank.

All moneys paid into court by the officers thereof, or any other person or persons, in causes pending therein, shall be forthwith deposited by the clerk, to the credit of the court, in the bank in the city of New York which shall be designated on the minutes of this court as the bank for keeping the moneys of the court. No money so deposited shall be drawn from said bank, except by order of the judge, in term or vacation, to be signed by the judge, and the order shall state the cause or causes in or on account of which it is drawn, and the same shall be entered on record.

Rule 219. — Satisfaction of Judgment or Decree to be entered.

Whenever, after judgment or decree for a sum certain, and before execution issued thereon, any party shall pay into court the amount thereof, together with the costs taxed; or whenever the marshal (or the proper officer) shall return process of execution satisfied, and pay the amount of the judgment or decree, and costs, upon which such process issued, into court, the clerk shall forthwith, and without other authorization, enter satisfaction of record of such judgment or decree, at the charge of the party in whose favor such judgment or decree may be rendered.

Rule 220. — Taxing Clerk's Costs.

The clerk's cost for entering satisfaction of judgment may be taxed, in the first instance, by the party obtaining the same.

Rule 221. — Checks for Money.

All checks for money to be drawn out of the bank, in causes in which money is deposited, shall be drawn and signed by the clerk as clerk, and such check shall be written immediately under the order of the judge, or on the same paper.

Rule 222. — Clerk to exhibit Account of Moneys.

The clerk shall exhibit to the court, on the first day of each stated term, a full and particular statement or account of all moneys remaining therein, or standing to his credit as clerk, subject to the order of the court, stating particularly on account of what causes such moneys are deposited, which account and the vouchers thereof shall be filed in court.

Rule 223. — Book in which an Account of Moneys to be kept.

The clerk shall provide a book, in which he shall keep a full and particular account, in each cause depending in the court, of all moneys brought into court, and of the payment thereof; and such book and the accounts therein shall, at all times, be open to the inspection and examination of the judge, the attorney of the United States, and the marshal of the district; and any particular account shall also be open to the inspection of any person interested therein.

MISCELLANEOUS RULES.**Rule 224. — Capias or Attachment on Indictment.**

On an indictment found by the grand jury, the District Attorney may forthwith sue out a *capias* or attachment, under the seal of the court, for the arrest and commitment of the party indicted; such writ may also issue if the defendant fails to appear pursuant to his recognizance given after indictment found.

Rule 225. — Scire Facias on Recognizance.

Where default is made by any party or witness bound by recognizance in any criminal proceeding, the clerk shall immediately issue a *scire facias* thereon.

Rule 226. — Moneys collected on Recognizances and for Fines.

The amount of forfeited recognizances, and all fines imposed and collected, shall be paid into court, to be accounted for by the clerk with the United States Treasury.

Rule 227. — Execution for collecting Fine.

When a fine is imposed by the court on any person for any cause, and the party is not thereupon committed, and such fine is not discharged previous to the close of the term, the clerk shall issue to the marshal a warrant of execution, commanding him to levy and make such fine of the goods and chattels, or, in default thereof, of the lands and tenements of the party.

Rule 228. — Fine may be mitigated or remitted.

Such fine may, on application by the party, and sufficient cause shown, before payment of the same out of court into the Treasury or otherwise, be mitigated or remitted, at any term succeeding that in which it was imposed.

Rule 229. — Process, when to be directed and delivered to Sheriff.

In all cases wherein the marshal of the district, or his deputy, is a party in interest, process shall be directed and delivered to the sheriff or under-sheriff of the city and county of New York for the time being, who are hereby, pursuant to the statute in such case made and provided, appointed to serve and execute such process.

Rule 230. — Special Bail.

Special bail may be put in and filed, for the purpose of surrendering the principal, before the return day of the writ.

Rule 231. — Bail to the Arrest.

Bail to the arrest may surrender the principal, or he may surrender himself in their exoneration, upon the bail bond given on his arrest.

Rule 232. — Copies of Bail Bond.

Copies of the bail bond, certified by the marshal or his deputy, may be used for that purpose, in the same manner as certified copies of a bail piece.

Rule 233. — Proceedings against the Marshal or other Officer.

Proceedings against the marshal or any other officer of the court, by attachment of course, and the filing of interrogatories for not returning the process of the court, are abolished.

Rule 234. — Order for Marshal, &c., to show Cause.

Every order for the marshal or other officer of the court to show cause why an attachment shall not issue against him, shall state the true cause or ground upon which such attachment is demanded.

Rule 235. — Officer to appear and purge himself of Default.

On due service of a certified copy of such order, the party against whom it is entered shall be bound to appear on the first sitting of the court four days thereafter, and, by affidavit filed in court, purge himself of every default or misfeasance in such order specified, to the same extent as if he had answered to interrogatories framed thereon.

Rule 236. — Committing Officer for Contempt.

If such officer fails, in the judgment of the court, so purging himself, the court shall forthwith proceed against such officer, to commit him fully for contempt, or otherwise, the same as if he had insufficiently answered interrogatories filed against him on his attachment.

Rule 237. — Attachment against Officer.

No writ of attachment shall issue, in the first instance, against any officer of this court, without the special mandate of the judge.

Rule 238. — Notices on Agent, Attorney, or Proctor. Double Time.

All notices served on an agent, or on attorneys or proctors residing out of the city and county of New York (and not having an office or place of business in this city, in Brooklyn, or Williamsburg), shall be double the time ordinarily required.

Rule 239. — Special Sessions.

No special sessions will be held for the trial of jury causes, nor out of the city of New York, without a special order of the court entered upon the minutes, and published in a newspaper in the city of New York, and also in one nearest the place where the court is to be held (if out of the city), at least fifteen days previous to such sitting.

Rule 240. — Rules of Circuit Court of the District and of Supreme Court of the State, when applicable.

In all cases not provided for by the rules of this court, the rules of the Circuit Court of the United States for this district, for the time being (whether adopted before or after these rules), so far as the same may be applicable, shall regulate the practice of this court; and, when there is no rule of the Circuit Court to apply, then the rules of the Supreme Court of this State, now in force, so far as the same may be applicable, shall govern.

Rule 241. — General Application of Rules.

The arrangement of rules under distinct heads of practice is not to prevent their governing every mode of procedure in court to which they may be applicable; but, if differing provisions are adopted, the rules in collision are to be restricted each to the head of practice under which it may be classed.

Extension of Rule 45.

APRIL 16, 1847.

ORDERED, that the standing Rule No. 45 of this court, in admiralty, be hereafter applied alike to suits *in personam* and *in rem*.

Publication of Notice. Reports of Commissioners.

DECEMBER 1st, 1847.

No decree shall be entered by default, or consent of parties in court, ordering the condemnation and sale of property arrested on process *in rem*, or for the distribution of the proceeds thereof in court, or of the avails of a stipulation or bond given for the value of such property, unless publication, according to the course of the court, shall have been duly made before the return day of the monition issued with the attachment in the case.

All reports of commissioners, assessors, adjusters, &c., on the matters referred by order of the court, shall be filed in court, at the opening of the court, on Tuesdays of the stated or special terms, unless otherwise specially allowed by the court, and on two days' previous notice in writing to the party to be affected thereby.

Exceptions to such reports shall be filed before or at the time confirmation thereof is moved in court, unless further time is allowed by order of the court, and no exception to any report can be received on file without the party offering it has duly filed stipulations in the cause, according to the course of the court (unless he be excused by the standing rules from stipulating).

Commissioners.

FEBRUARY 9, 1849.

ORDERED, that the commissioners appointed by the Circuit Court of the United States for the Southern District of New York, to take affidavits, bail, &c., under the several acts of Congress, be commissioners authorized by this court to do all the acts, and exercise and be vested with all the powers, jurisdiction, and authority contained in and conferred by the act of Congress of the United States passed August 12, 1848, and entitled "An act for giving effect to certain treaty stipulations between this and foreign governments, for the apprehension and delivering up of certain offenders."

Seamen's Wages.

JUNE TERM, 1849.

To prevent unnecessary multiplication of suits, and the accumulation of costs, for the recovery of seamen's wages, the following additional Rules in summary actions are adopted:—

RULE 1. — In suits *in personam* for wages, where the amount sworn

to be due, in the libel, is less than fifty dollars, the clerk shall not issue process without the usual stipulation for costs, unless the libel be accompanied by satisfactory proof that the respondent is about to leave the district; or by an *allocatur* of the judge, or by a certificate of a commissioner of the court, that, upon due service of a summons to the respondent, to appear before him, sufficient cause of complaint whereon to found process appeared.

RULE 2. — Such summons shall be served at least one day previous to the day of hearing therein mentioned, and if it shall appear on the hearing, to the satisfaction of the commissioner, that the wages claimed have been paid or forfeited, he shall refuse the certificate. And, if a reasonable offer of compromise shall be made on such hearing, by either party, and be rejected by the other, the commissioner shall add a certificate of such fact, and, in case of final recovery by the party rejecting such offer, he shall recover no costs. No costs shall be taxed for the proceeding, unless the commissioner shall certify that a demand of wages was made by the seamen a reasonable time previous to taking out the summons, and then the proctor shall be allowed no more than \$1.25, the ordinary fees for attendance and motion in court.

RULE 3. — No fees shall be taxed to the marshal, clerk, or witness on such proceedings, unless, by special mandate of the judge, a subpoena or attachment is issued to compel the attendance of witnesses.

RULE 4. — The commissioner's fees for his services thereon shall not exceed one dollar for a single sitting, and every adjournment granted shall be at the expense of the party obtaining it. If, however, it is required by the parties that the commissioner take down in writing the testimony heard on the summons, he shall be allowed therefor the customary fees for like services. Proof so taken in writing may be used by either party, on the hearing in court, in case the suit is further prosecuted.

RULE 5. — No more than one process shall issue against the master or owners, at the same time, for wages claimed by a crew, or any part thereof, for the same voyage, nor during the pendency of a suit therefor, nor shall costs be taxed for more than one retainer or libel, in such cases, unless an order of the judge, on cause shown, be previously had, authorizing suits therefor. Seamen claiming wages for the same voyage may file an affidavit stating the amount due them, and, if such affidavit be filed before the issue of process, the clerk may order the respondent to be held to bail in a sum exceeding by \$100 the whole amount of such claims.

RULE 6. — The bail or stipulation given by the master or owner, on such process, shall be conditioned to abide the order of the court

in the particular suit, and in favor of such other parties as the court may grant leave to join therein.

Time for Argument.

DECEMBER 23, 1850.

No counsel will be permitted to speak, in the argument of any cause in the court, more than one hour, without the special leave of the court, granted before the argument begins.

Venire.

JANUARY 29, 1851.

Except as may be from time to time otherwise specially ordered by the court, when, hereafter, a *venire* shall issue, pursuant to the standing Rules of the court, for the purpose of summoning petit jurors to serve in this court, the marshal, or other officer to whom such *venire* shall be directed, shall, with the clerk or his deputy, repair therewith to the office of the clerk of the city and county of New York, and there, at least ten days before the return of such *venire*, in the presence of the said clerk of the city and county, and of the marshal, or such other officer, the clerk or deputy shall proceed, if the clerk of said city and county shall consent thereto, to draw out of the box of jurors qualified according as the law of the State of New York was on the 20th day of July, 1840, to serve in the highest court of law thereof, kept by the clerk of the said city and county, the names of so many jurors as by the said *venire* shall be required to be named; and the clerk of this court shall immediately make out and certify, under his hand, a panel of the jurors so drawn, with their respective additions and places of abode, and deliver the same to the marshal or other such officer, and the persons so certified shall be summoned to serve as jurors, pursuant to such *venire*, and, if any of the persons whose names are so drawn shall be dead or removed from the city and county, or not qualified, as aforesaid, within the knowledge of the clerk or marshal, then such names shall be disregarded, and the clerk shall forthwith proceed to draw out of the said box other names, until the said panel shall be completed.

Whenever the court shall order petit jurors, under such *venire*, to be taken, wholly or in part from any county or counties within the district, other than the city and county of New York, the panel or panels thereof shall be drawn, certified, and summoned in like manner as is directed in the preceding order or Rule.

Call of Docket. Assignment for Hearing. Motion Day.

MARCH 2, 1852.

No case, after being called on the docket, will be allowed to retain its priority, except for the cause of sickness of some one whose attendance upon it is necessary, or because of other inevitable accident, nor will a case so called be assigned for hearing at a future day but for like causes.

Each Saturday of the term is assigned for hearing special motions, and the docket will not be called on these days.

Day Docket.

JANUARY TERM, 1857.

All cases placed upon the day docket shall be deemed set down absolutely for hearing or trial upon that day, and no motion for postponing such cases, or assigning them for hearing on a different day, will be entertained by the court, except for causes not existing, or not known to the party making the application, at the time the case was put upon the day docket.

Cases must be put upon the day docket in the order they stand on the term calendar, unless otherwise directed by the court, for cause shown prior to the making up of the day docket.

Cases on the day docket shall retain their priority from day to day, until called for hearing, and shall have preference to assigned cases; and each case not moved to hearing in its place shall go to the foot of the term calendar.

Approval of Bonds or Stipulations.

OCTOBER 1, 1857.

Hereafter, to obtain the approval of the judge of this court, of the sufficiency of sureties to bonds or stipulations offered for the discharge of vessels under arrest, upon attachments issued out of this court, it shall be necessary to give notice in writing, a reasonable time previous to the application, to the proctor of the libellant in the action, stating the time and place application will be made for such approval, and the name, occupation, and residence of the sureties to be offered; and the application shall be accompanied by an affidavit proving the service of such notice.

Commissioners' Costs.

MAY 28, 1859.

COSTS TAXABLE TO COMMISSIONERS APPOINTED AND ACTING ON REFERENCES UNDER RULE 44 OF THE RULES OF PRACTICE FOR THE COURTS OF THE UNITED STATES IN ADMIRALTY AND MARITIME JURISDICTION, PRESCRIBED BY THE SUPREME COURT OF THE UNITED STATES AT THE JANUARY TERM, 1845, AND UNDER THE RULES OF PRACTICE IN ADMIRALTY, ADOPTED BY THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

It being made a question of taxation what fees or compensation may be lawfully allowed to said officers for services rendered by them, under their appointments by authority of the above rules of court, and it appearing that the act of Congress entitled "An act to regulate the fees and costs to be allowed clerks, marshals, and attorneys of the Circuit and District Courts of the United States, and for other purposes," approved February 26, 1853 (10 United States Stat. at Large, 161), makes no provision for compensating commissioners appointed by the courts under the aforesaid rules for their services rendered in aid of the administration of justice, in the matters and cases therein specified; and we being of opinion that these special officers of the court do not come strictly within the act, and that, upon the usages and doctrines of courts of the United States, officers called upon to render services in those courts, according to their rules and modes of practice, for which no specific fees or costs are appointed by statute law, will be awarded compensation therefor, by the courts respectively in which the services are performed, corresponding in amount to that allowed by law in the state, for similar services rendered by state officers in a like capacity, particularly in chancery procedures (1 Blatchf. C. C. R. 652; *Hathaway v. Roach*, 2 Woodb. & M. 63); and it further appearing to us that such is an equitable and sound rule to be applied in relation to this class of officers, especially as the above-cited statute law of costs contains no prohibition of compensation to them by authority of the courts otherwise than through a positive appointment by statutory law: we are therefore of opinion that such commissioners are entitled to have taxed in their behalf, by the proper taxing officers, the rate of fees or costs allowable in the court of chancery of the State of New York, to masters in chancery of that court, for services therein performed by them, on the 1st of September, 1845, being the time the rule of practice aforesaid, adopted by the Supreme Court, went into operation, unless in particulars in which the rate of allowance then prevailing

in the state court shall have been rescinded or modified by subsequent regulations made by orders of the courts of the United States; and we designate as proper subjects of taxation, in cases where those services have been actually performed by such commissioners, in admiralty and maritime causes referred to them pursuant to the aforesaid rules, the following items embraced in the rules and orders of the court of chancery of the State of New York, revised and established by Chancellor Walworth, in 1844, under the head of "Master's Fees" (pages 190, 191), to wit:—

Commissioners' Costs.

For signing every summons for a witness or party to attend a reference, *twelve cents*.

For attending at the time and place, and adjourning the same at request, or upon reasonable cause, *one dollar*.

Attendance and hearing every argument upon any matter referred to him, when litigated, *three dollars*; and when he proceeds *ex parte*, *one dollar*.

Attendance and settling his report after argument, if both parties attend and litigate the same, *three dollars*; if he proceeds *ex parte*, *one dollar*.

For writing out and certifying the testimony of witnesses taken orally before him on the hearing, to file with his report, for every folio of one hundred words, *twenty cents*.

Copies of the same furnished, on request, to either party, for each folio, *ten cents*.

Drawing every report in pursuance of an order of reference to him (exclusive of schedules and the written proofs), for every folio, *twenty cents*.

Drawing all schedules to be annexed to reports, for every folio, *ten cents*.

Copies of reports and schedules, to be filed, for every folio, *ten cents*.

Copies of reports and schedules and all other proceedings, furnished by him to the parties, upon request, for every folio, *six cents*.

Marking every exhibit produced before him on a reference, with the title of the cause, and signing the same, *six cents*.

S. NELSON.

SAML. R. BETTS.

Interlocutory Decrees. Sale of Res.

FEBRUARY 7, 1863.

The rules governing the practice of the court, on the instance side, in admiralty, shall not authorize interlocutory decrees in suits *in rem*;

taken by default, on the return of process, to direct the sale of the *res* condemned thereby, before the sum chargeable thereon be decreed by the court, unless by consent of the parties in interest, or the express order of the court, because of the perishing or perishable condition of the *res*.

Residence of Surety.

APRIL 26, 1865.

In all cases where, by the rules of this court, a surety is required to be resident in this district, the rules are so modified as to require the surety to be resident in this district, or in the Eastern District of New York.

Jurors.

NOVEMBER 11, 1867.

It having been found impracticable to obtain jurors for the courts of the United States in this district from the jury-boxes used by the authorities of the State of New York, in the city and county of New York, for the procuring of juries for the courts of said State in said city and county, — It is now ordered that the clerk of this court and the clerk of the Circuit Court of the United States for this district make out and file in the office of the clerk of said Circuit Court, a list of persons to serve as jurors in the courts of the United States for this district, and that such list be made out in the same manner as, by the laws of the State of New York, the public officers charged with the duty of making out the list of jurors to serve as jurymen in the courts of said state, in and for said city and county, are required to make out such list. And it is further ordered that the said clerks, from time to time, correct and revise such list, as they may deem necessary so to do, to the end that such list may be made and kept, so far as practicable, in conformity with the laws of the State of New York; and it is further ordered that, from the list so made and filed, grand and petit jurors shall be selected, and shall be drawn by lot, in accordance, so far as practicable, with the laws of the State of New York, by the said clerks, as from time to time the same may be ordered by the courts of the United States in this district, and a list of the persons so drawn, certified by the said clerks, shall be attached to the writ of *venire* issued to the marshal for the summoning of such jurors; and it is further ordered that, as to all matters relating to the selecting, drawing, and summoning of jurors for said courts, the said clerks follow, so far as practicable, the provisions in respect thereto contained in the laws of the State of New York.

**Calendar. Notice of Trial. Note of Issue. Setting down Causes.
Day Calendar.**

FEBRUARY 22, 1868.

I. The calendar of admiralty causes shall hereafter be permanent, the causes being renumbered every January. Notices of trial shall be notices of four days, and for the first Tuesday of the term, and shall not be required except when a cause shall be placed upon such calendar.

II. A calendar shall be made up by the clerk before the next March term. The causes in which either party shall file a note of issue on or before the Thursday before the opening of the March term, containing the date of the issue, shall be placed on the calendar according to the dates of the issues. Thereafter causes shall be placed on the calendar by the clerk in the order in which notes of issue shall be filed by either party.

III. Causes may be generally reserved or set down for any particular day in term, except Saturdays, by consent of parties; but no cause shall be so reserved or set down after the same shall be placed upon the day calendar, except upon the order of the court. When a cause shall be called in its order upon the day calendar without being tried, the same shall go to the foot of the calendar, and the issue shall thereafter be of that date, unless otherwise ordered by the court at the time of being passed.

IV. There shall be a day calendar prepared, which shall be posted in one or more conspicuous places in the building in which the courtroom is situated, by three o'clock of the day previous (excluding Saturday), and no more than seven causes shall be placed upon the day calendar for any one day, and they shall be placed upon such day calendar according to the dates of their several issues.

V. A cause generally reserved may, by order of the court, upon application, and notice of two days, be placed upon the day calendar for trial for any day which the court, upon such application, shall direct, subject to the provisions of Rule IV. and not to be tried before, by its issue, it shall be entitled to be called upon such calendar, except that the court may, for special and peculiar reasons, give a cause the preference; and also except that actions for seamen's wages and for salvage, and actions where the property shall actually be in the custody of the marshal, shall have the preference, and shall be placed upon the calendar with such preference, upon any day the court shall, upon application, direct.

VI. Causes called on the day calendar may, for cause shown, be

set down for a later day in term, or marked off for the term, without prejudice; and causes which so go off for the term without prejudice shall take their places in order at the head of the calendar for the next term.

VII. When a cause that has been generally reserved is put on the day calendar, the clerk shall receive the usual fee for filing a note of issue.

VIII. All Rules and parts of Rules heretofore adopted by this court, not consistent with the foregoing, are hereby repealed.

Suits under Internal Revenue Laws. Distilleries. Admission to Premises.

MARCH 2, 1868.

The following regulations are adopted as Rules by the District Court: —

Supplement to Instructions, Series 3, No. 12. Additional regulations respecting suits arising under the internal revenue laws. Treasury Department, Office of Internal Revenue, Washington, February 26, 1868. Information having been, from time to time, received at this office, to the effect that distillation of spirits has been allowed in distilleries which were at the time in custody of the United States marshal, through the connivance of the person or persons employed by the marshal as keeper, it is hereby ordered that, in all cases where a marshal takes possession of a distillery, by virtue of a process issued for violation of the internal revenue laws, he shall immediately cause the head of the still to be taken off, or the machinery to be disconnected, in such manner as to render it impossible for distillation to be carried on. The expenses arising out of compliance with this order should be returned by the marshal as a part of his disbursements in the cause. It is further ordered that whenever any premises are held in custody by the marshal, under process issued for violation of the internal revenue laws, admission to such premises shall at all times be permitted for any internal revenue officer who would be entitled to admission were the same not in custody of the marshal. E. A. Rollins, Commissioner. Approved, H. McCulloch, Secretary of the Treasury.

Hearing of Exceptions.

MAY 11, 1868.

Exceptions to pleadings or to commissioners' reports will be heard on Saturdays, on proper notice, without being placed on the calendar.

Numbering Questions to Witnesses.

NOVEMBER 10, 1868.

In taking testimony, all masters, examiners, referees, and commissioners shall, when testimony is written down by question and answer, number the questions put to each witness, continuously, from the commencement of his direct examination to the final close of his examination, direct and cross.

Record on Appeal. Testimony. Clerk's Fees.

NOVEMBER 17, 1868.

The clerk of this court, in making up the record to be transmitted to the Circuit Court, on an appeal, in pursuance of Rule No. 53, adopted by the Supreme Court at the December Term, 1854, as one of the Rules for regulating proceedings in admiralty, shall not include in such record, as any portion of the testimony on the part of any party, any statement or report of any testimony given *viva voce* in open court, unless such testimony shall have been taken down in accordance with Rules 124 and 125 of this court, and shall have become the true minutes of such testimony, in accordance with Rules 124, 125, 126, and 127 of this court; and no consent of parties shall be of any avail to dispense with or vary so much of said Rules 124 and 125 as requires such *viva voce* testimony given in open court to be taken down in the same manner as in jury trials in common-law issues, and not *verbatim*, as in depositions *de bene esse*.

Whenever such testimony shall be taken down by the clerk, the legal fees chargeable by him therefor shall be taxable as a part of the costs in the cause.

Renumbering Causes left over. Causes which shall be omitted from the Calendar. New Note of Issue. Clerk's Fee.

MAY 24, 1870.

In renumbering, every January, the causes left over on the permanent calendar in admiralty, every cause which, since it was last put upon such calendar, shall have gone to the foot of the calendar more than once, and every cause generally reserved, the date of the issue in which on such calendar shall be a date more than three years prior to the first day of such January, shall be omitted from such calendar. But all such causes may be again placed upon such calendar by the

filing of a new note of issue, the date of the issue of any such cause which has gone to the foot of such calendar, to be the date of issue which it last bore upon such calendar. A new note of issue fee shall be paid for every cause that is so renumbered; but, by a written consent of the proctors in any cause, it may at any time be stricken off from the permanent calendar.

Attachment of Property in Custody of Collector of Customs. Form of Monition.

FEBRUARY 28, 1871.

In all suits *in rem* against property seized in this district under the provisions of any law of the United States relating to customs, the clerk, on receiving a certificate from the collector or other principal officer of the customs in this district, setting forth that such property is in his custody, shall, in issuing a monition against such property, so alter the usual form, that the monition shall command the marshal to attach the property by leaving with the collector or other person having such property in custody a copy of the monition, and also a notice requiring such collector or other person to detain such property in custody until the further order of the court respecting it, and to give due notice, &c. (in the usual form).

Bank designated for depositing Moneys.

APRIL 14, 1871.

All moneys which shall be paid into this court, or be received by any officer thereof, shall be forthwith deposited in "The Central National Bank of the City of New York," a designated depositary of the United States, in the name and to the credit of this court: *Provided*, that nothing herein shall be construed to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court.

Opinion to be annexed to Record, on Writ of Error, Appeal, &c.

NOVEMBER 21, 1873.

In all cases brought to the Circuit Court from this court, by writ of error, or appeal, or petition of review, the clerk of this court shall annex to, and transmit with, the record or proceedings of this court, a copy of any opinion or opinions filed in this court upon the decision of any matter contained in such record or proceedings, and, if no such opinion has been filed, the clerk shall so certify.

List of Suits for Saturdays. Fee to Clerk.

FEBRUARY 9, 1874.

The clerk shall prepare a list, on which he shall place all suits and matters which are to be brought before the court on Saturdays, on notice to an adverse party, by motion, petition, order to show cause, or otherwise (except orders to show cause for adjudication in bankruptcy, reports of referees on denials of bankruptcy, hearings for discharges in bankruptcy, and hearings on applications to annul discharges in bankruptcy), of which a memorandum containing the title of the suit or matter, and the subject of the notice, and the names of the attorneys, solicitors, or proctors on both sides, shall be filed with the clerk for the purpose. The order of cases on the list shall be the order of time in which the memoranda are filed with the clerk. Every suit and matter placed on the list shall remain thereon until the hearing on such notice is had, or until it is otherwise disposed of, and shall not lose its place by an adjournment of it. It may be adjourned at any time, by a written consent of parties, to any Saturday, such consent to be handed to the crier of the court. The list shall be called in its order every Saturday. A case called and not answered to by either party will be stricken off. The fee to the clerk for every memorandum filed shall be ten cents. A duplicate list shall be prepared for the use of the bar.

JURISDICTION IN PRIZE CASES.

Condemnation of Property taken as Prize.

Ninth. Of all proceedings for the condemnation of property taken as prize, in pursuance of section fifty-three hundred and eight;¹ title "INSURRECTION."

6 Aug., 1861, c. 60, s. 2, v. 12, p. 319.

18 Feb., 1875, c. 80, v. 18, p. 317.

1. (Feb., 1807.) The District Courts of the United States are courts of *prize*; and have power to carry into effect the sentences of the old Continental courts of appeals in prize causes. *Jennings v. Carson*, 4 Cranch, 2.

2. (Feb., 1808.) The possession of the sovereign of the captors gives jurisdiction to his courts. *Hudson v. Guestier*, 4 Cranch, 293.

3. The possession of the captors in a neutral port is the possession of their sovereign. *Ib.*

4. If the possession be lost by *recapture*, *escape*, or *voluntary discharge*, the courts of the captor lose the jurisdiction which they had acquired by the seizure. *Ib.*

5. (Feb., 1816.) During the late war between the United States and Great Britain, a French privateer, duly commissioned, was captured by a British cruiser, afterwards recaptured by an American privateer, again captured by a squadron of British frigates, and recaptured by another American privateer, and brought into a port of the United States for adjudication. Restitution, on payment of salvage, was claimed by the French consul. A claim was also interposed by citizens of the United States, who alleged that their property had been unlawfully taken by the French vessel before her first capture, on the high seas, and prayed an indemnification from the proceeds. Restitution to the original French owner was decreed; and it was held that the courts of this country have no jurisdiction to redress any supposed torts committed on the high seas upon the property of its citizens by a cruiser regularly commissioned by a

¹ See Amendment, Sup. Rev. Stat. p. 138.

foreign and friendly power, except where such cruiser has been fitted out in violation of our neutrality. *L'Invincible*, 1 Wheat. 233.

6. (Feb., 1818.) The district courts of the United States have jurisdiction of questions of prize and its incidents, independent of the special provisions of the prize act of the 26th June, 1812, ch. 430. *The Amiable Nancy*, 3 Wheat. 546.

7. (Feb., 1819.) Unless the neutral rights of the United States (as ascertained by the law of nations, the acts of Congress, and treaties) are violated by the cruisers sailing under commissions from those governments, captures by them are to be regarded by us as other captures, *jure belli*, are regarded; the legality of which cannot be determined in the courts of a neutral country. *The Divina Pastora*, 4 Wheat. 52.

8. (Feb., 1819.) It is a principle which has been frequently laid down by this court, that it is the exclusive right of governments to acknowledge new states arising in the revolutions of the world, and until such recognition by our government, or by the government of the empire to which such new state previously belonged, courts of justice are bound to consider the ancient state of things as remaining unchanged. *The Divina Pastora*, 4 Wheat. 65, note *a*.

9. (Feb., 1819.) The right of adjudicating on all captures and questions of prize exclusively belongs to the courts of the captor's country; but it is an exception to the general rule, that where the captured vessel is brought, or voluntarily comes, *infra præsidia* of a neutral power, that power has a right to inquire whether its own neutrality has been violated by the cruiser which made the capture; and, if such violation has been committed, is in duty bound to restore to the original owner, property captured by cruisers illegally equipped in its ports. *The Estrella*, 4 Wheat. 298.

10. In the absence of any act of Congress, the courts of the United States would have authority, under the general law of nations, to decree restitution of property captured in violation of their neutrality, under a commission issued within the United States, or under an armament, or augmentation of the armament, or crew of the capturing vessel, within the same. *Ib*.

11. (Feb., 1820.) Where the original owner seeks for restitution in our courts, upon the ground of a violation of our neu-

trality by the captors, the *onus probandi* rests upon him; and if there be reasonable doubt respecting the facts, the court will decline to exercise its jurisdiction. *La Amistad de Rues*, 5 Wheat. 385.

12. (Dec., 1864.) Property captured *on land* by the officers and crews of a naval force of the United States is not "maritime prize," even though, like cotton, it may have been a proper subject of capture generally, as an element of strength to the enemy. *Mrs. Alexander's Cotton*, 2 Wall. 404.

13. (Dec., 1866.) The jurisdiction of a court of admiralty, over a vessel captured *jure belli* is determined by the fact of capture. The filing of a libel is not necessary to create it. *The Nassau*, 4 Wall. 634.

14. Whether a maritime lien for work and materials alleged to have been furnished prior to her capture *jure belli* is lost by such capture, is a proper subject for investigation and decision by the prize court before which the captured vessel is brought for adjudication; and which the parties setting up such lien can, on presentation of their claim to that tribunal, properly have decided. *Ib.*

15. (Dec., 1868.) The District Court of the United States, sitting as a prize court, may hear and determine all questions respecting claims arising *after* the capture of the vessel. *The Siren*, 7 Wall. 152.

16. (Oct., 1812.) Captors have a right to carry their prizes to a proper and convenient port for adjudication, and are not controllable by the revenue officers. *Schooner Lively and Cargo*, 1 Gall. 314.

17. (Oct., 1813.) The courts of the United States have jurisdiction over all prizes made in ports, as well as on the high seas, by virtue of the delegation of admiralty and maritime jurisdiction. *Cargo of Ship Emolous*, 1 Gall. 563.

18. (Oct., 1813.) The prize court has jurisdiction to decree restitution of a vessel recaptured from the enemy, and to award damages against the recaptors for embezzlement. *Schooner Dove and Cargo*, 1 Gall. 584.

19. (Oct., 1813.) If the claimant does not show a good title to the property, it will not be restored to him, although it is not condemned as forfeited. But it will be retained in the registry until the real owner appears and proves his title. *The Eliza*, 2 Gall. 3.

20. In such a case, if the property has been engaged in a trade with the enemy, the United States may proceed against it as prize of war. *Ib.*

21. (May, 1814.) The trial of prizes belongs exclusively to the courts of the country of the captors. No neutral nation can justly interfere, or take cognizance of them, when brought into its territory, except for the purpose of ascertaining whether the vessel is lawfully commissioned, or the prize has been captured in violation of the neutral sovereignty. And it makes no difference whether the property be claimed as belonging to the subjects of the neutral nation, within whose territory it is brought, or to third persons. *A fortiori*, no suit can be sustained in a neutral tribunal against a lawfully commissioned *cruiser*, which is brought within its jurisdiction, to recover damages for a supposed illegal capture. Such suit belongs exclusively to the courts of the captors, and their jurisdiction is not destroyed by the recapture of the prize supposed to be illegally captured.¹ *The Invincible*, 2 Gall. 28.

22. The admiralty has jurisdiction *in rem*, as well as *in personam*, in cases of maritime torts, where the thing or the person is within the territory. It may issue a foreign attachment to arrest the *choses in action* of the offending party. *Ib.*

23. The acts done under the authority of one sovereign can never be subject to the revision of the tribunals of another sovereign. *Ib.*

24. (May, 1815.) A court of common law cannot, even incidentally, decide a question of prize. *Maisonnaire v. Keating*, 2 Gall. 324.

25. And I have no hesitation to pronounce that the cognizance of ransom-bills exclusively belongs to the admiralty. *Ib.* 341.

26. (May, 1815.) The prize courts of a belligerent may take jurisdiction of property captured by its cruisers, while such property is lying in a foreign neutral port. *The Arabella*, 2 Gall. 367.

27. (March, 1832.) The common admiralty jurisdiction extends to all things done *super altum mare*. *Johnson v. Twenty-one Bales, &c.*, 2 Paine, 601.

28. The prize jurisdiction embraces the whole question of prize, unrestrained by the locality of the capture, and takes cognizance of all captures, no matter where made, if made *as prize*. *Ib.*

¹ Affirmed, 1 Wheat. 238.

29. (Oct., 1868.) The admiralty courts of the United States have jurisdiction in prize over captures made on the Mississippi River during the late rebellion. *United States v. 269½ Bales of Cotton*, Woolw. 236.

30. The exclusive jurisdiction of the admiralty over the great rivers is now well established. *Ib.*

31. The prize jurisdiction has been sustained only when the naval arm has made, or co-operated in making, or, by its presence and active assistance, contributed immediately in effecting, the capture. *Ib.*

32. Vessels not commanded by government officers, nor armed, and used merely as transports for troops, are not war vessels, and do not bring within the prize jurisdiction a capture on land by military forces. *Ib.*

33. Conjoint captures on land are brought within the prize jurisdiction only by statute. *Ib.*

34. (April, 1862.) The District Courts of the United States are permanent prize tribunals, and take cognizance of questions of prize by virtue of their general jurisdiction. *The Amy Warwick*, 2 Sprague, 123.

35. Prize courts are subject to the instructions of their sovereign. *Ib.*

36. In the absence of such instructions, their jurisdiction and rules of decision are to be ascertained by reference to the known powers of such tribunals, and the principles by which they are governed under the public law and the practice of nations. *Ib.*

37. If, under the President's instructions, an enemy's ship should be taken and sent in for adjudication, the prize court must proceed to decide the question of prize upon the principles of public law. *Ib.*

38. The court may be compelled to decide what shall be deemed enemy's country. *Ib.*

39. (Sept., 1863.) Cotton captured as prize, and in the custody of the marshal under a warrant from the prize court, is not liable to be proceeded against for the internal revenue tax while in his custody. *The Victory*, 2 Sprague, 226.

40. (Oct., 1863.) The District Courts of the United States have jurisdiction in prize in case of enemy's property found on a wharf, having been recently water-borne, and there captured

by a force sent in boats from a vessel of war. *Six Hundred and Eighty Pieces of Merchandise*, 2 Sprague, 233.

41. (Aug., 1861.) The District Courts of the United States have exclusive jurisdiction in prize cases, without restriction to cases of seizures within their territorial dimensions or on the high seas. *The Bark Hiawatha and Cargo*, Blatchf. Prize Cas. 1.

42. (Dec., 1861.) Under the Confiscation Act of July 13, 1861, a vessel belonging to an alien female, who resided transiently at New Orleans, having gone there to visit some relatives and attend to some matters of account, with the intention of then returning abroad, and who was engaged in no mercantile business there was held not to be subject to forfeiture. *The Schooner D. F. Keeling*, Blatchf. Prize Cas. 92.

43. (March, 1862.) It is the usage of prize courts to exercise jurisdiction over property captured on board a vessel without having the vessel itself brought within their cognizance. *The Schooner Edward Barnard and Cargo*, Blatchf. Prize Cas. 122.

44. (April, 1862.) Where a vessel captured as prize is appraised by a naval survey, and appropriated to the use of the United States, and her papers and crew are, with the appraisal, sent to this court, proceedings against her in prize are regular, although she is not brought before the court. *The Sloop Advocate and Cargo*, Blatchf. Prize Cas. 142.

45. (May, 1862.) The vessel was destroyed by her captors because unfit to be sent in for adjudication. The cargo was sent in. *Held*, that the court had judicial cognizance of the capture of the vessel without having her within its territorial jurisdiction. *The Schooner Zavalla and Cargo*, Blatchf. Prize Cas. 173.

46. (Aug., 1862.) Property captured as prize is under the control of the court from the time it is delivered to the court by the prize-master until it is finally disposed of, and the filing of a libel is not necessary to give the court cognizance of the property. *The Steamer Memphis and Cargo*, Blatchf. Prize Cas. 202.

47. (Sept., 1862.) Property seized by an armed vessel of the United States empowered to make prizes while afloat in an enemy port, on board of an enemy vessel, is lawful prize under the law of nations. *One Thousand Two Hundred and Fifty-three Bags of Rice, One Hundred and Three Casks of Rice*, Blatchf. Prize Cas. 211.

48. Enemy property captured by a public vessel in an enemy

port, although, when seized, stored in a warehouse on land, near the water, — *Held*, under the facts in this case, to be lawful prize. *Ib.*

49. (Sept., 1862.) The omission of the captors of a vessel to bring in the captured crew will not enure to defeat a capture by a government vessel. *The Schooner Shark and Cargo*, Blatchf. Prize Cas. 215.

50. (Sept., 1862.) In this case, after the vessel had been libeled as prize, a libel on the instance side of the court was filed against her to recover a private claim. The court dismissed the latter libel, holding that the case was under the exclusive jurisdiction of the prize court; that the vessel, while under arrest as prize, could not be attached in a private action, and that relief must be sought in the prize court. *Hanlan et al. v. The Steamer Nassau*, Blatchf. Prize Cas. 220.

51. (Nov., 1862.) A vessel guilty of an unlawful trade with the enemy is liable to capture for the offense at any time during the voyage in which the offense is committed. *The Steamer Memphis and Cargo*, Blatchf. Prize Cas. 260.

52. (Dec., 1862.) An objection that this vessel, seized by naval forces in the harbor of Beaufort, N. C., after its capture, and while the place was in custody of the army of the United States, was not subject to capture solely by the naval forces, overruled. *The Ship Gondar and Cargo*, Blatchf. Prize Cas. 266.

53. (Dec., 1862.) It is no legal ground of objection to the jurisdiction of the court in a prize case that the arrest was made out of its territorial authority. *Two Hundred and Eighty-two Bales of Cotton, &c.*, Blatchf. Prize Cas. 302.

54. The court has jurisdiction, under the law of nations and by municipal law, when the subject-matter of the suit is prize of war, without regard to the locality of the arrest or cause of action; and it is unimportant to the question of prize or no prize whether the capturing land and sea forces act in conjunction or separately. *Ib.*

55. The prize court has cognizance of all captures in an enemy country made in creeks, havens, and rivers, when made by a naval force solely, or in co-operation with land forces. *Ib.*

56. (Dec., 1862.) If the vessel arrested as prize was acting in violation of public laws, she is amenable to trial and condemnation therefor in behalf of the United States, whether the per-

sons or means employed in making the seizure had authority to make it or not. *The Steamer Ouachita and Cargo*, Blatchf. Prize Cas. 306.

57. It is enough that the government comes into the national court demanding the condemnation of an offender; and the court never inquires whether the party or thing proceeded against has been regularly or irregularly brought under attachment or complaint. *Ib.*

58. (July, 1863.) In prize cases, the court of that district into which the property is carried and proceeded against has jurisdiction. *The Steamer Peterhoff and Cargo*, Blatchf. Prize Cas. 464.

59. The mere carrying of a vessel, or of her cargo, seized on the high seas as prize of war, into any particular district, without the institution there of any proceedings in prize, cannot affect or take away the jurisdiction over the property, of the District Court of another district in which the proceedings against the property may be instituted after the property has been carried into such other district. *Ib.*

60. (1792.) If the powers of an admiralty and maritime court are delegated by Congress to the District Court, those of a prize court are mixed in the mass of authority with which it is invested, and require no particular specification. . . . The fact is that prize jurisdiction is inherent in a court of admiralty, and not lost, but torpid, like other authorities of the court when there are no occasions for its exercise. *Jennings v. Ex'rs of Carson*, 1 Pet. Adm. 7.

61. (1792.) I do therefore decree, adjudge, and determine that the plea to the jurisdiction of the court, as not being competent to determine prize questions, be and the same is hereby overruled. *Jennings v. Ex'rs of Carson*, 1 Pet. Adm. 11.

62. (June, 1793.) A British vessel was captured by a French privateer within the territorial jurisdiction of the United States. The owners of the vessel claim her, with damages, but the claim is dismissed, the court having no jurisdiction. *Findlay v. The Ship William*, 1 Pet. Adm. 12.

63. (1794.) Jurisdiction of the District Court is ousted, in case of capture on the high seas, by a privateer of another nation, lawfully commissioned, of the property of an enemy to the sovereign issuing the commission. The case is not altered though

the capture should have been originally made by a proscribed privateer. *Castello v. Bouteille et al.*, Bee Adm. 29.

64. (1794.) A privateer commissioned by the French government, captured the British brig *Favourite*, and brought her into Charleston, where the British consul libeled her. Bolchos, claimant, pleaded the 17th article of the treaty with France, in bar to the jurisdiction of the District Court. The judge sustained the plea, and dismissed the libel with costs. *British Consul v. Schooner Favorite*, Bee Adm. 39.

65. (1794.) A French armed ship, duly commissioned, but fitted out here, may bring in and carry away her prizes, without being subject to the jurisdiction of the District Court [under article 17 of the treaty with France]. *Stannick v. Ship Friendship*, Bee Adm. 40.

66. (1794.) The courts of the United States cannot question the validity of the commission of a French privateer, whose prize is brought into our ports by virtue of the 17th article of our treaty with France. *Ramon de Salderondo v. Ship Nostra Signora del Carmino*, Bee Adm. 43.

67. (1794.) Restitution of a vessel and cargo, illegally seized and carried into a French port, was decreed by the admiralty there. The District Court of South Carolina sustained a suit for consequential damages. *M'Grath v. Sloop Candaleiro*, Bee Adm. 60.

68. (1795.) French prisoners on their way to England seized the ship in which they were and brought her into the port of Charleston. The District Court has not power to order restitution, either by the law of nations, or consistently with the treaty between the United States and France. *Reid v. Ship Vere*, Bee Adm. 66.

69. (1795.) An augmentation of force in our ports is a breach of neutrality, and of the law of nations, and of the law of the United States, and will occasion a restitution of the prize if brought within our jurisdiction. *British Consul v. Schooner Nancy*, Bee Adm. 73.

70. (1796.) Sale on land in the ports of the United States cannot be prevented by our courts of admiralty, in cases of lawful capture on the high seas by French privateers duly commissioned. *British Consul v. Ship Amity*, Bee Adm. 89.

71. (1800.) Condemnation in a French court of admiralty, of

property carried into the ports of an ally, cannot be inquired into by the courts of this country. *Sheaff & Turner v. Seventy Hogsheads, &c.*, Bee Adm. 163.

72. (1780.) Admiralty has jurisdiction in cases of claims by seamen to shares of prizes. *Mahoon v. The Brig Gloucester*, Bee Adm. 395.

PRIZE RULES

ADOPTED BY THE

DISTRICT COURT OF THE UNITED STATES

•
FOR THE

SOUTHERN DISTRICT OF NEW YORK.

Rule 1. — Appointment of Prize Commissioners.

There shall be issued, under the seal and authority of this court, commissions to such persons as the court shall think fit, appointing them severally commissioners to take examinations of witnesses in prize causes *in preparatorio*, on the standing interrogatories, which have been settled and adopted by this court, and all other depositions which they are empowered to require, and to discharge such other duties in relation to ships, or vessels, or property brought into this district, as prize, as shall be designated by the said commissions and the rules and orders of this court.

1. (Dec., 1866.) When, under the act of Congress of March 25, 1862, for the better administration of the law of prize (12 Stat. at Large, 374), the prize commissioners, authorized by the act, certify to a District Court that a prize vessel has arrived in their district and has been delivered into their hands, this is sufficient evidence to the court that the vessel is claimed as a prize of war, and in its jurisdiction as a prize court. *The Nassau*, 4 Wall. 634.

Rule 2. — Captors to give Notice.

The captors of any property brought into this district as prize, or some one on their behalf, shall, without delay, give notice to the district judge, or to one of the commissioners aforesaid, of the arrival of the property, and of the place where the same may be found.

Rule 3. — Vessel to be moored.

Upon the receipt of notice thereof from the captors, or district judge, a commissioner shall repair to the place where the said prize property then is ; and if the same be a ship or vessel, or if the property be on board a ship or vessel, he shall cause the said ship or vessel to be safely moored in sufficient depth of water, or in soft ground.

Rule 4. — Examination of Prize.

The commissioner shall, in case the prize be a ship or vessel, examine whether bulk has been broken ; and if it be found that bulk has been broken, one of the said commissioners shall take information upon what occasion, or for what cause, the same was done. If the property captured be not a ship or vessel, or in a ship or vessel, he shall examine the chests, packages, boxes, or casks, containing the subject captured, and shall ascertain whether the same has been opened, and shall, in every case, examine whether any of the property originally captured has been secreted or taken away subsequently to the capture.

Rule 5. — Seals to secure Prize Property.

The commissioner in no case shall leave the captured property until he secure the same by seals upon the hatches, doors, chests, bales, boxes, casks, or packages, as the case may require, so that they cannot be opened without breaking the said seals ; and the said seals shall not be broken, or the property removed, without the special order of the court, excepting in case of fire and tempest, or of absolute necessity.

Rule 6. — Account of Prize Goods, &c., to be taken and deposited.

If the captured property be not a vessel, or on board a vessel, the commissioner shall take a detailed account of the particulars thereof, and shall cause the same to be deposited, under the seals as aforesaid, in a place of safety, there to abide the order or decree of this court.

1. (Oct., 1813.) On the original hearing, if the character and origin of the captured property be in question, the court should order a survey and report. *Ship Liverpool Packet and Cargo*, 1 Gall. 512.

2. (July, 1863.) In this case the cargo of the prize vessel, consisting wholly of articles contraband of war, was unladen and inventoried and appraised, and reported to the court, before the hearing. *The Schooner Stephen Hart and Cargo*, Blatchf. Prize Cas. 387.

3. Nearly all of the cargo was delivered to the government, for its use, at the appraised value. *Ib.*

4. (Feb., 1812.) That the situation of the vessel and cargo might be known, as it was at the time of its being placed in the custody of the marshal, and of its delivery over to the claimants, the court directed an inventory to be taken and filed, and ordered a survey of the ship, her tackle, apparel and furniture. *United States v. Ship Ariadne*, Fisher Cas. 34.

Rule 7. — Captors failing to give Notice.

If no notification shall, within a reasonable time, be given by the captors, or by any person in their behalf, of any property which may be brought as prize within this district, and the commissioners, or either of them, shall become informed thereof by any means, it shall be the duty of the said commissioners, or one of them, to repair to the place where such property is, and to proceed in respect to the same as if notice had been given by the captors.

Rule 8. — Captors to deliver Ship's Papers, &c.

The captor shall deliver to the judge — at the time of such notice, or to the commissioner or commissioners, when he or they shall, conformably to the foregoing rule, repair to the place where such captured property is, or at such other time as the said commissioners, or either of them, shall require the same — all such papers, passes, sea-briefs, charters, bills of lading, cockets, letters, and other documents and writings as shall have been found on board the captured ship, or which have any reference to or connection with the captured property, and which are in the possession, custody, or power of the captors.

1. (Oct., 1813.) Important documents, which were the cause of capture, having been surreptitiously taken from the possession of the prize-master, exact copies taken by him and verified by his affidavit were, under the circumstances, admitted as good evidence. *The Julia and Cargo*, 1 Gall. 594.

2. (May, 1814.) The custody of the papers of captured vessels belongs exclusively to the prize court. *The Diana*, 2 Gall. 93.

3. It is the duty of captors, immediately upon arrival in port, to deliver, upon oath, all the papers of captured vessels into the registry of the prize court. *Ib.*

4. (May, 1815.) The letter and affidavit [of claimants] hav-

ing been on file, the captors have a right to use them, subject, however, to any explanation which the other party may offer. *The Betsy*, 2 Gall. 381.

5. (1814.) This case will first be considered as it is disclosed by the ship's papers and the preparatory examinations, and then will be examined the defense arising out of the further proof that was ordered and produced. *Johnson v. Twenty-one Bales, &c., of Merchandise*, Van Ness. 5.

6. (March, 1862.) Vessel and cargo held to be enemy property, on the papers found on board; but no legal proofs being furnished of the actual capture, or of any inability to furnish proof of the time and place of seizure, a decree of condemnation was deferred until such testimony should be produced, or an excuse be furnished for the admission of secondary proof. *The Schooner Sarah & Caroline and Cargo*, Blatchf. Prize Cas. 123.

Rule 9. — Ship's Papers, how to be marked and authenticated.

The said papers, documents, and writings shall be regularly marked and numbered by a commissioner; and the captor, chief officer, or some other person who was present at the taking of the prize, and saw that such documents, papers, and writings were found with the prize, must make a deposition before one of the said commissioners that they have delivered up the same to the judge or commissioner as they were found or received, without any fraud, subduction, or embezzlement. If any documents, papers, or writings, relative to or connected with the captured property, are missing or wanting, the deponent shall, in his said deposition, account for the same, according to the best of his knowledge, information, and belief.

Rule 10. — Further or Other Papers, if found.

The deponent must further swear that if, at any time thereafter, and before the final condemnation or acquittal of the said property, any further or other papers relating to the said captured property shall be found or discovered to the knowledge of the deponent, they shall also be delivered up, or information thereof given to the commissioners or to this court, which deposition shall be reduced to writing by the commissioner, and shall be transmitted to the clerk of the court, as herein-after mentioned.

Rule 11. — Ship's Papers, with Preparatory Examinations, to be transmitted to the Court.

When the said documents, papers, and writings are delivered to a commissioner, he shall retain the same till after the examination *in preparatorio* shall have been made by him, as is hereafter provided, and then he shall transmit the same, with the same affidavit in relation thereto, the preparatory examinations, and the information he may have received in regard to the said captured property, under cover and under his seal, to this court, addressed to the clerk thereof, and expressing on said cover to what captured property the documents relate, or who claim to be the captors thereof, or from whom he received the information of the capture; which said cover shall not be opened without the order of the court.

Rule 12. — Captors to produce Persons captured, for Examination.

Within three days after the captured property shall have been brought within the jurisdiction of this court, the captor shall produce to one of the commissioners three or four, if so many there be, of the company or persons who were captured with, or who claim the said captured property; and in case the capture be a vessel, the master and mate, or supercargo, if brought in, must always be two, in order that they may be examined by the commissioner *in preparatorio* upon the standing interrogatories.

1. (May, 1814.) It is the duty of captors to bring in the prize crew, or at least the master and principal officers, with the prize, for adjudication. *The Bothnia*, 2 Gall. 78.

2. (May, 1815.) It is the duty of captors to bring in the master of the captured ship and the ship's papers. An omission to do this must be fully and satisfactorily explained to the court; otherwise it will withhold condemnation. *The Arabella*, 2 Gall. 367.

3. How far a want of regular evidence may be supplied by the affidavits or written declarations of the captured. *Ib.*

4. (Jan., 1862.) The settled rule of the prize courts is to require the captors of a vessel to bring in for examination her master and principal officers and some of her crew; and the examination must be confined to them, unless special permission of the court is obtained to examine other persons. *The Schooner Jane Campbell and Cargo*, Blatchf. Prize Cas. 101.

5. Prize law inhibits, under the disallowance of prize to the captors, and the positive infliction of punishment by penalties and costs, any irregularities against the property seized or the captured crew, especially where the latter are neutral. *Ib.*

6. The burden is on the captors to prove the existence of an overruling necessity justifying the spoliation of property found on the prize, or the separation of the officers or crew from the captured vessel, or the omission to send them into port with the prize for examination. *Ib.*

7. (March, 1862.) The libel charged that the vessel, while attempting to violate the blockade, was burned, and that a part of her cargo was saved as prize, but no proof was given in support of the libel. The court allowed the libellants thirty days to produce evidence, failing which the libel to be dismissed. *The Ship Thomas Watson and Cargo*, Blatchf. Prize Cas. 120.

8. Where the testimony of witnesses from the delinquent vessel is dispensed with, adequate proof must be supplied, *aliunde*, of the *delictum* charged, before a condemnation will be awarded. *Ib.*

9. (March, 1862.) None of the officers or crew of the vessel were sent into this port with her, or produced with her to be examined as witnesses, but the master subsequently appeared and was examined *in preparatorio*. *The Schooner Henry Middleton and Cargo*, Blatchf. Prize Cas. 121.

10. (May, 1862.) The crew of the vessel were, at their request, put on shore by the captors, and no person on board of her at her capture was sent in for examination. On special leave of the court, witnesses from the capturing vessel were examined. *The Schooner Zavalla and Cargo*, Blatchf. Prize Cas. 173.

11. The rule that the testimony for the condemnation of the prize must be obtained directly from documents or witnesses found on board of her at the time of her seizure is always adhered to, unless satisfactory reasons are shown for its non-observance. *Ib.*

12. (July, 1862.) The rule of the prize law is that the master and some of the crew of a prize vessel must be brought in to be examined as witnesses to the facts attending the seizure. *The Schooner Actor and Cargo*, Blatchf. Prize Cas. 200.

13. The rule will be dispensed with in a case where there is no physical means of complying with it on the part of the captors. *Ib.*

14. Where the personal production of the ship's company is satisfactorily excused, the court will suspend proceedings in the cause, or admit secondary evidence. *Ib.*

15. In this case, none of the ship's company being produced as witnesses, and there not being sufficient evidence to condemn the vessel under the practice of the English prize court, the court allowed the libellants time, not exceeding a year and a day from the institution of the suit, to produce proof that the vessel was arrested in fact and was lawful prize of war, and that the more direct testimony usually produced to that end was not legally at command of the libellants. *Ib.*

16. (Nov., 1862.) Oral exceptions, taken at the hearing, to the regularity and sufficiency of the proofs, on the ground that, of twenty persons composing the crew of the prize vessel, only the master and a cabin boy were produced as witnesses, overruled, on the ground that the claimant was guilty of laches in not making the objection at an earlier day. *The Steamer Elizabeth and Cargo*, Blatchf. Prize Cas. 250.

17. The 12th prize rule of this court is express, that the captors must produce to the prize commissioner, to be examined as witnesses, three or four, if so many there be, of the company or persons who were captured with, or who claim the captured property; and, in case the capture be a vessel, the master and mate, or supercargo, if brought in, must be two. *Ib.*

18. An omission to observe this rule is an irregularity, which, if properly and seasonably taken advantage of by a claimant, might lead to the rejection of the proofs offered, or compel the libellants to show a satisfactory excuse for the omission. *Ib.*

19. In this case, the court, of its own motion, on seeing that the rule had not been complied with, suspended a final decree in the case, and gave leave to the libellants to submit proofs to the court within ten days, showing why the terms of the rule had not been observed. *Ib.*

20. Within the time so allowed, satisfactory evidence was produced to the court that no malpractice had been intentionally allowed in the case, and that the failure to produce more than the two witnesses was the result of misapprehension or accident, and not of any purpose to disregard the rule. *Ib.*

21. (Dec., 1862.) The failure to bring in any one of the offi-

cers or crew of the vessel but the mate, excused. *The Schooner John Gilpin and Cargo*, Blatchf. Prize Cas. 291.

22. (Feb., 1863.) The vessel was, after her capture, appropriated to the use of the United States, and was not sent into port. Her cargo was sent in by another vessel, and was arrested in this suit. None of her company were sent in as witnesses. A person present at the capture was, by order of the court, examined as a witness. *The Sloop Wave and Cargo*, Blatchf. Prize Cas. 329.

23. (Feb., 1812.) By a most unwarrantable misconduct in the captor, no witnesses are sent in with the vessel, or produced for examination upon the standing interrogatories. The court, whose duty it is to examine as well into the circumstances occurring at the time of capture, as they relate to the captured, as into the conduct of cruisers, is bound to pronounce its marked disapprobation of negligence so gross. In such cases the court has established a rule that claimants shall not be delayed on this account. In cases where no claimants appear, all proceedings for the purposes of condemnation will be stayed. Instances of such negligence have multiplied, and have forced on the court a determination, so far as its powers extend, to reform a malpractice which may be attended with consequences highly mischievous. *United States v. Ship Ariadne*, Fisher Cas. 33.

Rule 13. — Examinations in Preparatorio.

In the examination of witnesses *in preparatorio*, the commissioner shall use no other interrogatories but the standing interrogatories, unless special interrogatories are directed by the court. He shall write down the answer of every witness separately to each interrogatory, and not to several interrogatories together; and the parties may personally, or by their agents, attend the examination of witnesses before the commissioners; but they shall have no right to interfere with the examination by putting questions or objecting to questions; nor to take notes of the proceedings before the commissioner, to be used otherwise than before the court. All objections to the regularity or legality of the proceedings of the commissioners must be made to the court.

1. (April, 1862.) The first hearing is limited to the inquiry, whether the captured property is prize of war or not. *The Bark Empress and Cargo*, Blatchf. Prize Cas. 146.

2. (May, 1862.) The papers found on board the captured vessel, and the testimony of the witnesses *in preparatorio*, can alone be considered on the hearing, in the first instance, in the determination of the issue. *The Ship Cheshire and Cargo*, Blatchf. Prize Cas. 151.

3. (Oct., 1862.) The general rule of evidence in prize cases is, that, in the first instance, only the ship's papers and the preparatory examinations can be adduced; but in seizures for breach of blockade the captors are permitted to put in affidavits contradicting the peremptory testimony as to the nearness of the captured vessel to the blockaded port, and the acts denoting an intent to evade the blockade. *The Schooner Joseph H. Toone and Cargo*, Blatchf. Prize Cas. 223.

4. (Oct., 1862.) The court cannot, in a prize case, notice, on final hearing, exceptions to proceedings before the prize commissioners because of alleged irregularities in the admission of testimony, or in the method of conducting the examinations, or to the competency of the witnesses examined. Relief in respect to such matters must be sought by a special motion, on notice to the district attorney, pointing out the irregularities complained of. *The Schooner Ezilda and Cargo*, Blatchf. Prize Cas. 232.

5. (May, 1863.) Under the special circumstances of this case, the master of the vessel, who had been examined as a witness *in preparatorio*, was allowed, on the application of the claimants, to be re-examined on one of the standing interrogatories, on condition that he should at the same time be examined on certain special interrogatories framed by the court. *The Steamer Peterhoff and Cargo*, Blatchf. Prize Cas. 345.

6. By the regular course of procedure in a prize suit, a witness cannot claim a right to modify or enlarge his testimony after it has been formally completed and submitted to the court. *Ib.*

7. (July, 1863.) The court, on the application of the libellants, permitted the cook of the vessel, one of the witnesses, to be re-examined on one of the standing interrogatories, it appearing from his affidavit that he did not fully answer that interrogatory in relation to certain papers on board, although he had testified to the omitted facts on an examination made of him on board of the capturing vessel. *The Schooner Stephen Hart and Cargo*, Blatchf. Prize Cas. 387.

8. The court, on the application of the libellants, permitted the first mate of the vessel, one of the witnesses, to be re-examined on the standing interrogatories, it appearing from his affidavit that he had the virtual control of the vessel on her voyage, and had, on his examination, not disclosed the truth as to the true destination of the vessel and cargo. *Ib.*

9. The question of the admissibility of depositions given on the re-examination of persons found on board of a captured vessel is one resting in the sound discretion of the court. *Ib.*

10. If in this suit the case upon the depositions as originally taken, without the re-examinations of the two witnesses, were a clear one in favor of the claimants and free from all doubt, the court would hesitate, perhaps, to admit the re-examinations. *Ib.*

11. A prize case is, in the first instance, to be tried on evidence coming from the captured. If, upon such evidence, no doubt arises, the property is to be restored; and the privilege, on the part of the captors, of giving further proofs is, in such cases, rarely granted. *Ib.*

12. Within these principles the court has endeavored, in all proper cases, to exhaust the knowledge of the persons found on board of captured vessels. *Ib.*

13. (July, 1863.) The examination of witnesses in a prize case should be confined to persons on board of the captured vessel at the time of the capture, unless upon special permission of the court first obtained. *The Ship Alliance and Cargo*, Blatchf. Prize Cas. 646.

14. In this case none of the crew on board at the time of the capture, eleven in number, were examined; but, instead, two seamen who had been discharged from the vessel before her capture were examined; and no explanation of the reason for this was given. This was a great irregularity, which cannot be overlooked or disregarded in a consideration of the proofs. *Ib.*

15. (1795.) Evidence to acquit or condemn must in the first instance come from the vessel taken, and the examination on oath of the master and other officers. *Moodie v. The Betty Cathcart*, Bee Adm. 292.

Rule 14. — Admonishing the Witness.

When a witness declares he cannot answer to any interrogatory, the commissioner shall admonish the witness that, by virtue of his oath taken to speak the truth and nothing but the truth, he must answer to the best of his knowledge ; or when he does not know absolutely, then to answer to the best of his belief concerning any one fact.

Rule 15. — Witnesses to be examined separately. Refusal to answer

The witnesses are to be examined separately, and not in presence of each other, and they may be kept from all communication with the parties, their agents, or counsel, during the examination. The commissioners will see that every question is understood by the witnesses, and will take their exact, clear, and explicit answers thereto ; and if any witness refuses to answer at all, or to answer fully, the examining commissioner is forthwith to certify the facts to the court.

Rule 16. — Captors to produce all their Witnesses in Succession. Return, &c.

The captors must produce all their witnesses in succession, and cannot, after the commissioners have transmitted the examination of a part of the crew to the judge, be allowed to have others examined without the special order of the court ; and the examination of every witness shall be begun, continued, and finished in the same day, and not at different times. Copies of the standing interrogatories shall not be returned by the commissioner with the examinations, but it shall be sufficient for the answer of the witnesses to refer to the standing interrogatories by corresponding numbers.

Rule 17. — Oath to Witness.

Before any witness shall be examined on the standing interrogatories, the commissioner shall administer to him an oath in the following form : “ You shall true answer make to all such questions as shall be asked of you on these interrogatories, and therein you shall speak the whole truth, and nothing but the truth, so help you God.” If the witness is conscientiously averse to swearing, an affirmation to the same effect shall be administered to him.

Rule 18. — Interpreters. Oath.

Whenever the ship's company, or any part thereof, of a captured vessel, are foreigners, or speak only a foreign language, the commissioner taking the examination may summon before him competent interpreters, and put to them an oath well and truly to interpret to the witness the oath administered to him, and the interrogatories propounded, and well and truly to interpret to the commissioners the answers given by the witness to the respective interrogatories.

Rule 19. — Form of Return to Examination in Preparatorio.

The examination of each witness on the standing interrogatories shall be returned according to the following form:—

“Deposition of A. B., a witness produced, sworn, and examined *in preparatorio*, on the — day of —, in the year —, at the — of —, on the standing interrogatories established by the District Court of the United States for the Southern District of New York; the said witness having been produced for the purpose of such examination by C. D. in behalf of the captors of a certain ship or vessel called the — (or of certain goods, wares, and merchandise, as the case may be).

“1. To the first interrogatory the deponent answers that he was born at —, &c.

“2. To the second interrogatory the deponent answers that he was present at the time of the taking,” &c.

Rule 20. — Signature and Certificate to Deposition.

When the interrogatories have all been answered by a witness, he shall sign his deposition, and the commissioner shall put a certificate thereto in the usual form and subscribe his name to the same.

Rule 21. — Interested Persons not to act as Commissioners.

No person having or claiming any interest in the captured property, or having any interest in any ship having letters of marque or commissions of war, shall act as a commissioner. Nor shall a commissioner act either as proctor, advocate, or counsel, either for captors or claimants, in any prize cause whatever.

Rule 22. — Producing Documents and Witnesses in Preparatorio.

If the captain or prize-master neglect or refuse to give up and deliver to the commissioners the documents, papers, and writings relating to

the captured property, according to these rules, or refuse or neglect to produce, or cause to be produced, witnesses to be examined *in preparatorio*, within three days after the arrival of the captured property within the jurisdiction of this court, or shall otherwise unnecessarily delay the production of the said documents, papers, or writings, the commissioners, or one of them nearest to the place where the captured property may be, or before whom the examination *in preparatorio* may have been already begun, shall give notice in writing to the delinquent to forthwith produce the said documents, papers, and writings, and to bring forward his witnesses; and if he shall neglect or delay so to do for the period of twenty-four hours thereafter, such commissioner shall certify the same to this court, that such proceedings may thereupon be had as justice may require.

Rule 23. — Notice of Capture. Witnesses.

If, within twenty-four hours after the arrival within this district of any captured vessel, or of any property taken as prize, the captors, or their agents, shall not give notice to the judge or a commissioner pursuant to the provisions herein made, or shall not, two days after such notice given, produce witnesses to be examined *in preparatorio*, then any person claiming the captured property and restoration thereof may give notice to the judge or the commissioners, as aforesaid, of the arrival of the said captured property; and thereupon such proceedings may be had by the commissioners in respect to the said property, and relative to the documents, papers, and writings connected with the said capture, which the claimant may have in his possession, custody, or power, and relative to the examination of witnesses *in preparatorio*, as near as may be, as is before provided for in cases where the captors shall give notice and examine *in preparatorio*. And the said claimant may in such cases file his libel for restitution, and proceed thereon according to the rules and practice of this court.

1. (Nov., 1861.) Claimants of property seized as prize, who complain of irregularities, delay, and acts of negligence on the part of the captors, must proceed according to Rule 23 of the standing Prize Rules,—that is, by libel and monition, and not by special motion, to discharge the arrest. *The Schooner Tropic Wind and Cargo*, Blatchf. Prize Cas. 64.

Rule 24. — Libel. Monition.

As soon as may be convenient after the captured property shall have been brought within the jurisdiction of this court, a libel may be filed,

and a monition shall thereupon be issued, and such proceedings shall be had as are usual in conformity to the practice of this court in cases of vessels, goods, wares, and merchandise seized as forfeited, in virtue of any revenue law of the United States.

1. (Jan., 1827.) In every case of a proceeding for condemnation, upon captures made by the public ships of war of the United States, whether the same be cases of prize strictly *jure belli*, or upon public acts in the nature of captures *jure belli*, the proceedings are in the name and authority of the United States, who prosecute for themselves as well as for the captors. *The Palmyra*, 12 Wheat. 11.

2. (Dec., 1864.) A libel in prize need not allege for what cause a vessel has been seized, or has become prize of war, as, *ex gr.*, whether for an attempted breach of blockade or as enemy property. It is enough if it allege generally the capture as prize of war. *The Andromeda*, 2 Wall. 481.

3. (Oct., 1814.) A general prize allegation cannot be properly joined with an information on a seizure for the violation of a statute. *The Dimon*, 2 Gall. 306.

4. (Feb., 1862.) In prize cases the libel need not set forth specifically the grounds on which condemnation is sought. *The Revere*, 2 Sprague, 107.

5. (July, 1865.) Cotton picked up at sea by a cruiser of the United States, under circumstances which show that it has recently been abandoned, either by an enemy or by a neutral engaged in breaking the blockade of an enemy's port, is rightly proceeded against as prize rather than derelict. *Seventy-eight Bales of Cotton*, 1 Lowell, 11.

6. In order that goods should be condemned as prize, it is not necessary that they should be taken by force, nor from actual hostile possession; it is enough that they have been rightly taken and are the property of an enemy. *Ib.*

7. (1814.) In a prize case, the allegation in the libel that the claimants are alien enemies is a material one, forming the very foundation of the proceeding. And as this is the main fact which sustains the prosecution, it must, if it can, be negatived, or it will be taken as admitted. *Johnson v. Thirteen Bales, &c., of Merchandise*, Van Ness, 45.

8. (Feb., 1849.) Original proceedings taken in a court of

admiralty against vessels captured in war by a public vessel, to divest the former ownership and to confiscate the captured property, should be taken in the name of the government under whose authority the capture was made, and not in the names of the individual captors, unless express authority is given to the latter to sue in their own names. *Proceeds of Prizes of War*, Abb. Adm. 495.

9. But where the *proceeds* of prizes have been brought into court, the parties entitled to distributive shares therein may file their libel in their individual names. *Ib.*

10. Where the United States district attorney authorizes a suit for the condemnation of a prize to be filed in the names of the individual captors, the court will allow the proceedings to be so conducted, instead of requiring that the suit be instituted on behalf of the government. *Ib.*

11. (Aug., 1861.) The pleadings in prize cases should be simple, direct, and free from technicalities. *The Bark Hiawatha and Cargo*, Blatchf. Prize Cas. 1.

12. (April, 1862.) The requisites of a libel in prize, stated. *The Bark Empress and Cargo*, Blatchf. Prize Cas. 146.

13. The proper form of a libel in prize is a mere general allegation of prize. *Ib.*

14. (July, 1863.) A libel in a prize case need contain no further averment than that the property seized is prize of war. *The Bark Sally Magee and Cargo*, Blatchf. Prize Cas. 382.

15. (Oct., 1863.) Objections taken, in the claims, to the sufficiency of the libel in point of pleading, overruled. *The Schooner Mary Clinton and Cargo*, Blatchf. Prize Cas. 556.

Rule 25. — Perishable Property. Bail.

In all cases, by consent of captor and claimant, or upon attestation exhibited upon the part of the claimant only, without consent of the captor, that the cargo or part thereof is perishing or perishable, the claimant, specifying the quantity and quality of the cargo, may have the same delivered to him, on giving bail to answer the value thereof if condemned, and further to abide the event of the suit; such bail to be approved by the captor, or otherwise the persons who give security swearing themselves to be severally and truly worth the sum for which they give security. If the parties cannot agree upon the value of the cargo, a decree or commission of appraisement may issue from the court to ascertain the value.

Rule 26.—Sale of Perishable Property.

In cases where there is no claim, an affidavit being exhibited on the part of the captor of such perishing or perishable cargo, specifying the quantity and quality thereof, the captor may have a decree or commission of appraisement and sale of such cargo, the proceeds thereof to be brought into court, to abide the further orders of the court.

1. (Aug., 1796.) Though a French prize could not be regularly attached, before condemnation, in an American port, if the captor, having power to sell the prize, agrees it shall be sold, and the proceeds abide the issue of a suit, the irregularity is obviated. *Del Col v. Arnold*, 3 Dall. 333, 335.

2. (June, 1813.) When a sale decreed pending proceedings. *Ships Euphrates and Francis and Cargoes*, 1 Gall. 450.

3. (Oct., 1814.) It is the duty of the marshal, upon all interlocutory sales, to bring the proceeds into court, with a regular account of the sales. *The Avery*, 2 Gall. 307 a.

4. (May, 1815.) Of the mode of sale and distribution, in case of condemnation, of prize goods lying in a foreign neutral port. *The Arabella*, 2 Gall. 368.

5. (Oct., 1861.) The vessel and cargo having been condemned, and an appeal taken by the claimants to the Circuit Court, this court, on evidence that the cargo was perishable, and the vessel and cargo liable to deterioration, and on the consent of all the parties, directed the prize commissioners to sell the vessel and cargo at public auction, and to bring the proceeds of sale into court. *The Bark Pioneer and Cargo*, Blatchf. Prize Cas. 61.

6. The act of March 3, 1849 (9 Stat. 378, sec. 8), commented on, in respect to the disposition of the proceeds of a sale by a marshal. *Ib.*

7. (Nov., 1861.) In this case the cargo of the prize vessel, consisting of tobacco, was suffering damage from exposure to the weather and from confinement in the hold of the vessel, and the price of the article had increased since the capture. The cargo having been condemned in the District Court, the claimants, after appealing to the Circuit Court, applied to the Circuit Court for the delivery of the cargo to them on the usual stipulation. The court denied this application, but appointed

commissioners to appraise the cargo, and ordered it to be sold and the proceeds to be brought into court. *The Schooner Crenshaw and Cargo*, Blatchf. Prize Cas. 631.

8. (March, 1862.) There having been no appearance, on due return of the warrant of arrest of the cargo, and the capture having vested jurisdiction in the court over the property seized, the court ordered the cargo to be sold, and the proceeds to be brought into court. *The Schooner Sarah & Caroline and Cargo*, Blatchf. Prize Cas. 123.

9. (May, 1862.) After a decision condemning the vessel and cargo, but before the entry of the decree, the libellants moved for an immediate sale of vessel and cargo, as being in a perishing condition. The court held, on the facts, that no necessity was shown for such sale. *The Ship Cheshire and Cargo*, Blatchf. Prize Cas. 165.

10. (May, 1862.) In this case, after an affirmance by the Circuit Court of the decree of the District Court condemning the vessel and cargo, and the taking of an appeal to the Supreme Court by the claimants, the Circuit Court, on the application of the prize commissioners, and on proof that the cargo, consisting of tobacco, was in a perishing condition, ordered it to be sold. *The Bark Hiawatha and Cargo*, Blatchf. Prize Cas. 632.

11. The provisions of the act of March 25, 1862, (12 Stat. 374,) in regard to the sale of prize property, *pendente lite*, commented on. *Ib.*

12. That act applies to proceedings in the Circuit Court as well as in the District Court. *Ib.*

13. The practice under that act prescribed and regulated. *Ib.*

14. (July, 1862.) Motion founded on the report of the prize commissioner for an order to sell the cargo, pending the hearing, denied; the proposed sale being earnestly opposed by the claimants, and there being a strong preponderance in the number of witnesses against the necessity of the sale, and the report not being founded on the personal inspection and judgment of the commissioner. *The Ship Alliance and Cargo*, Blatchf. Prize Cas. 186.

15. (July, 1862.) On a motion for the sale of a cargo pending the hearing, on the ground that it is in a perishing condition, the judgment of the prize commissioners, founded on their inspection, as evidenced by their report, will prevail, unless controlling

evidence is produced counteracting their judgment. *The Steamer Nassau and Cargo*, Blatchf. Prize Cas. 198.

16. (July, 1862.) A motion being made by the libellants in a private suit for the sale of the vessel as perishing, and it appearing that the vessel was under capture as prize of war, the motion was denied. *Hanlan et al. v. The Steamer Nassau*, Blatchf. Prize Cas. 199.

17. The capture as prize overrides and supplants all private liens. *Ib.*

18. (Sept., 1862.) Motion by the libellants for the sale of the vessel, because she is in a perishing condition, granted. *The Steamer Ella Warley and Cargo*, Blatchf. Prize Cas. 213.

Rule 27. — Docket.

The name of each cause shall be entered by the clerk upon the docket for hearing in their order, according to the dates of the returns of the monitions, and lists of the causes ready for hearing are to be constantly hung up in the clerk's office for public inspection.

Rule 28. — Return to Decree or Commission of Appraisement.

In all cases where a decree or commission of appraisement and sale of any ship and cargo, or either of them, shall have issued, no question respecting the adjudication of such ship and goods, or either of them, as to freight or expenses, shall be heard till the said decree or commission shall be returned, with the account of sales, and the proceeds, according to such account of sales, to be paid into court, to abide the order of the court in respect thereto.

Rule 29. — Proceedings after Examination in Preparatorio.

After the examination, taken *in preparatorio* on the standing interrogatories, are brought into the clerk's office, and the monition has issued, no further or other examinations upon the said interrogatories shall be taken, or affidavits received, without the special directions of the judge, upon due notice given.

Rule 30. — Invoking Papers.

None but the captors can, in the first instance, invoke papers from one captured vessel to another, nor can it be done without the special mandate of the judge; and, in case of its allowance, only extracts from the papers are to be used.

1. (Dec., 1866.) Though invocation, in prize cases, is not regularly made on original hearing, but only after a cause has been fully heard on the ship's documents and the preparatory proofs, and where suspicious circumstances appear from these; yet where the court below, in the exercise of its discretion, has allowed it on first hearing, the decree will not necessarily be reversed; decrees of condemnation having passed in both the cases invoked, one *pro confesso*, and the other by a decree of the highest appellate court. *The Springbok*, 5 Wall. 1.

2. (March, 1862.) The invocation of papers is to be obtained, not by pleading, but by motion. *The Schooner Joseph H. Toone and Cargo*, Blatchf. Prize Cas. 124.

3. (Dec., 1862.) Invocation of proofs from another case, on the allegation that the consignor and consignee of the cargo were the same in the two cases, and that the shipments had relation to a common commodity and purpose, a bill of lading found on board of one vessel covering cargo on both vessels. *The Schooner Albert and Cargo*, Blatchf. Prize Cas. 280.

Rule 31. — Invocation to be on Affidavit.

The invocation shall only be allowed on affidavit on the part of the captors, satisfying the court that such papers are material and necessary.

Rule 32. — Notice of Application to invoke.

Application for permission to invoke must be on service, at least two days previously, of notice thereof, and copy of the affidavit, on the claimants or their agent (if known to be in this port); and after invocation allowed to the captors, the claimants, by permission of the judge, for sufficient cause shown, may use other extracts of the same papers in explanation of the parts invoked.

Rule 33. — Invoking Proofs of Course.

But when the same claimants intervene for different vessels, or for goods, wares, or merchandise captured on board different vessels, and proofs are taken in the respective causes, and the causes are on the dockets for trial at the same time, the captors may, on the hearing in court, invoke, of course, in either of such causes, the proofs taken in any other of them; the claimants, after such invocation, having liberty to avail themselves also of the proofs in the cause invoked.

1. (July, 1863.) Invocation of proofs from two other cases on the docket of the court for trial at the same time with this case, allowed, under the 33d standing rule of the court in prize cases. *The Bark Springbok and Cargo*, Blatchf. Prize Cas. 434.

2. In addition to the practice of invocation, it is the uniform practice of prize courts to take cognizance of the *status* of the claimants who appear before it, with a view to see whether they come with clean hands, or whether they have been before engaged in a traffic similar to that with which they are charged in the particular case. *Ib.*

Rule 34.—Motion for Commission and Decree of Appraisement and Sale.

In all motions for commissions, and decrees of appraisement and sale, the time shall be specified within which it is prayed that the commissions or decree shall be made returnable.

1. (Aug., 1862.) This vessel having been sent in to the court as a prize, the court, on the application of the district attorney before libel filed, and before any appearance by any claimant, and without notice to any claimant, made an order appointing appraisers to value the prize, with the view to her being taken for the use of the government. After the libel was filed the claimant appeared in the suit, and moved to vacate the order because it was made without notice to him. *Held*, that the motion could not be granted. *The Steamer Memphis and Cargo*, Blatchf. Prize Cas. 202.

2. The fact that the order appointing appraisers was signed by the judge when out of this district is no objection to its validity. *Ib.*

3. (Aug., 1862.) The practice of this court is settled, that where the captors desire to take to their own use the property captured as prize, its value is to be ascertained by sworn appraisal, and deposited in court, or in the treasury, subject to the order of the court. *The Steamer Ella Warley and Cargo*, Blatchf. Prize Cas. 204.

4. The court prefers this method to that of taking bail, and regards a sworn appraisal as a more satisfactory mode of ascertaining the value of prize property than an auction sale. *Ib.*

5. (Sept., 1862.) The authority of the court to appraise property captured as prize, and to transfer it to the use of the government, before condemnation, at its appraised value, maintained. *The Steamer Ella Warley and Cargo*, Blatchf. Prize Cas. 207.

Rule 35. — Commissioners' Returns, &c.

The commissioners shall make regular returns on the days in which their commission or decrees are returnable, stating the progress that has been made in the execution of the commission or decrees, and, if necessary, praying an enlargement of the time for the completion of the business.

Rule 36. — Commissioners to bring in Proceeds.

The commissioners shall bring in the proceeds which have been collected at the time of their returns; and they may be required from time to time to make partial returns of such sums only as are necessary to cover expenses.

Rule 37. — Vouchers on Return of Commission or Decree.

On the returns of commissions or decrees, the commissioners or the marshal must bring in all the vouchers within their control.

Rule 38. — Moneys to be deposited in Bank.

All moneys brought into court in prize causes shall be forthwith paid into such bank, in the city of New York, as shall be appointed for the keeping of moneys of the court, and shall only be drawn out on the specific orders of the court, in favor of the persons respectively having right thereto, or their agents or representatives, duly authorized to receive the same.

Rule 39. — Clerk to exhibit Statement of Moneys.

At every stated term of the court, the clerk shall exhibit to the court a statement of all the moneys paid into court in prize cases, designating the amount paid in each particular case, and at what time.

Rule 40. — Statement of Moneys to be approved and filed.

The statement, when approved by the court, shall be filed of record in the clerk's office, and be open to the inspection of all parties interested, and certified copies thereof shall be furnished by the clerk, on request, to any party in interest, his proctor or advocate.

Rule 41. — Bail. Stipulation.

When property seized as prize of war is delivered upon bail, a stipulation, according to the course of the admiralty, is to be taken for double its value.

1. (June, 1813.) When delivery on bail shall be or not. *Ships Euphrates and Francis and Cargoes*, 1 Gall. 450.

2. (Oct., 1814.) A case of collusive capture. Regularly no delivery on bail of prize property ought to be made, either to the captors or the claimant, until after a hearing of the cause. In most cases a sale is preferable to an appraisement, when the value is to be ascertained for the purpose of a delivery on bail. *The George*, 2 Gall. 248.

3. (Nov., 1814.) No delivery of property on bail can legally be made in cases where the United States are a party, without due notice to the district attorney that he may have a hearing before the court. *Ex parte Robbins*, 2 Gall. 319.

4. *Quære*, if a delivery on bail can be ordered by the court in vacation, before the return term of the process. *Ib.*

5. (April, 1862.) Objections to the delivery of captured property, on bonds, to claimants. *The Amy Warwick*, 2 Sprague, 150.

6. (Oct., 1861.) The cargo having been delivered to the claimants on bail before hearing, it afterwards appeared that it had been appraised at less than its real value, and that the security was in too small an amount. A motion was made that the cargo be restored to the custody of the court, but it appearing that it was no longer in the possession of the claimants or the bail, but had passed to *bona fide* purchasers, the court awarded monitions against the claimants to pay into court the difference in amount between the proceeds or value of the cargo delivered to them and the amount of the bail. *The Schooner Lynchburg and Cargo*, Blatchf. Prize Cas. 57.

7. Property seized as prize may be pursued *in rem* into the hands of all persons who become possessed of it, or by monition against such persons, if its proceeds have been brought into court. *Ib.*

8. It matters not whether the prize goods remain in kind or have been disposed of *bona fide* by sale. The holder of the thing or of its proceeds may be compelled, by monition, to deliver the same into court, to be there disposed of according to the rights of the captors. *Ib.*

9. And this may be done as against persons having the proceeds of prize property in their hands, when an insufficient stipulation has been taken on a delivery on bail. *Ib.*

10. (Feb., 1812.) The hearing in this cause having been delayed, the court, conceiving itself warranted by the state of the season, the situation of the ship, and the circumstances of the case, directed both vessel and cargo to be delivered to the claimants, on giving security in the appraised value to abide the final sentence and decree of this court and the court or courts of appeal. *United States v. Ship Ariadne*, Fisher Cas. 33.

Rule 42. — Claim. Test Affidavit.

Every claim interposed must be by the parties in interest, if within convenient distance, or, in their absence, by their agent or the principal officer of the captured ship, and must be accompanied by a test affidavit, stating briefly the facts respecting the claim, and its verity, and how the deponent stands connected with or acquired knowledge of it. The same party who may intervene is also competent to attest to the affidavit.

1. (Feb., 1815.) A test affidavit ought to state that the property at the time of shipment, and also at the time of capture, did belong, and will, if restored, belong to the claimant; but an irregularity in this respect is not fatal. *Schooner Adeline*, 9 Cranch, 245.

2. A test affidavit by an agent is not sufficient, if the principal be within the country and within a reasonable distance from the court. But if test affidavits, liable to such objections, have been acquiesced in by the parties in the courts below, the objections will not prevail in this court. *Ib.*

3. (Feb., 1816.) If the national character of property, captured and brought in for adjudication, appears ambiguous or neutral, and no claim is interposed, the cause is postponed for *a year and a day* after the prize proceedings are commenced; and if no claimant appears within that time, the property is condemned to the captors. *The Harrison*, 1 Wheat. 297.

4. (Feb., 1825.) Although a consul may claim for *subjects unknown* of his nation, yet restitution cannot be decreed without specific proof of the individual proprietary interest. *The Antelope*, 10 Wheat. 67.

5. (Dec., 1866.) Demands against property captured as prize of war must be adjusted in a prize court. The property arrested as prize is not attachable at the suit of private parties. If such parties have claims which, in their view, override the rights of captors, they must present them to the prize court for settlement. *The Nassau*, 4 Wall. 634.

6. (Oct., 1812.) Claims in prize causes should be made by the parties themselves, if within the jurisdiction, and not by mere agents. The captors have a right to the answers of claimants on oath. *Schooner Lively and Cargo*, 1 Gall. 314.

7. (May, 1813.) A claim in the prize court should always be by the owner, if within the jurisdiction. *Schooner Sally and Cargo*, 1 Gall. 400.

8. (Oct., 1813.) It is irregular for a mere nominal agent to interpose claims for his principal, where they are within the jurisdiction. *Ship St. Lawrence and Cargo*, 1 Gall. 467.

9. (Oct., 1813.) An alien enemy cannot sustain a claim in a prize court, nor can a citizen claim the property of an enemy in a prize court, upon an alleged sale since the war. *Cargo of Ship Emolus*, 1 Gall. 563.

10. (May, 1814.) During war, no claim standing in opposition to the ship's papers and preparatory evidence, is ever admitted in a prize court. *The Diana*, 2 Gall. 93.

11. (Oct., 1814.) In general, the claimant must make his claim and affidavit, without being assisted by the papers in shaping them; and if they be found substantially to agree with the documents, he will afterwards be permitted to correct any formal errors from the documents themselves. But in special cases, where a proper ground is laid by affidavits, an order will be made for an examination of such papers as are necessary to a party to make a proper specification of his own claim, but not for a general examination of all the ship's papers. *The S. J. Indiano*, 2 Gall. 269.

12. (May, 1815.) Though an agent may claim, yet if sufficient time intervene, the principal must support it by his affidavit. *The Betsey*, 2 Gall. 382, 383.

13. (May, 1865.) Under the acts of Aug. 6, 1861 (12 Stat. at Large, 319), and July 17, 1862 (Id. 589), the proceedings to condemn enemy property, when seized, must conform to the proceedings in admiralty and revenue cases. *United States v. One*

Thousand Seven Hundred and Fifty-six Shares of Capital Stock, 5 Blatchf. 232.

14. An alien enemy has, under those acts, a right to appear as claimant of his property sought to be condemned, as forfeited, by a prosecution *in rem* under those acts, and to answer and defend the suit. *Ib.*

15. (Feb., 1862.) In a prize case, an answer in the nature of pleading is irregular; and where a simple claim is filed, and the claimant annexes thereto his answer as a "test affidavit," so much of the document called a "test affidavit" as goes beyond the facts of the claim is not to be regarded. *The Revere*, 2 Sprague, 107.

16. (1814.) John Richardson was a native subject of the king of Great Britain. He was naturalized as a citizen of the United States in the year 1795; and in the year 1797 returned to England. In the year 1799 he came again to the United States; and in the year 1800 he returned to England, where he continued to reside until March, 1813, making a residence of sixteen years in England, with the exception of a visit to the United States of a few months. On the third day of September, 1812, after the commencement of hostilities between the two countries, a quantity of merchandise shipped by Richardson from Liverpool to the United States was captured by a privateer of the United States as prize; and the merchandise was claimed by Richardson in the prize court at New York, on the ground that he was a naturalized citizen of the United States. *Held*, that he was a British subject and an alien enemy, and therefore not entitled to claim the merchandise before the prize court. *Johnson v. Twenty-one Bales, &c., of Merchandise*, Van Ness, 5.

17. (1814.) In a prize case, if the claimant's answer does not negative a material allegation in the libel, the allegation will be taken as admitted. *Johnson v. Thirteen Bales, &c., of Merchandise*, Van Ness, 45.

18. (1814.) Alien enemies dwelling in the enemy country cannot be heard in a prize court. *Johnson v. Thirteen Bales, &c., of Merchandise*, Van Ness, 59.

19. (Aug., 1861.) Mode of pleading in an answer and claim commented on. *The Schooner Hannah M. Johnson and Cargo*, Blatchf. Prize Cas. 2.

20. (Aug., 1861.) What statements are necessary in an an-

swer and claim, in a prize case. *The Schooner Lynchburg and Cargo*, Blatchf. Prize Cas. 3.

21. (March, 1862.) A claimant in a prize suit cannot put in a special claim or answer leading to issues other than the one simply of prize or no prize, without the assent of the United States attorney or the special order of the court. *The Schooner Louisa Agnes and Cargo*, Blatchf. Prize Cas. 107.

22. An affidavit annexed to a claim is extra-judicial, and is not testimony in the case. *Ib.*

23. (March, 1862.) Motion by the owner of the cargo for leave to put in a claim to that, as neutral property, shipped from one neutral port to another, there being in the proposed claim averments denying that the vessel violated or attempted to violate the blockade, and invoking the test oath of the owner of the vessel previously made to his claim. The court allowed the claim to be filed, omitting the averments in question. *The Schooner Joseph H. Toone and Cargo*, Blatchf. Prize Cas. 124.

24. An answer or claim in a prize suit need contain nothing more than a general denial of the grounds of condemnation alleged in the libel. *Ib.*

25. (March, 1862.) A test oath is an oath of ownership simply, and all papers annexed to such oath will be stricken from the record as irregular. The fact of the ownership, with a general denial that the captured property is lawful prize of war, is all that is proper to include in the claim. *The Brig Delta and Cargo*, Blatchf. Prize Cas. 133.

26. (April, 1862.) The practice in prize proceedings, stated, as to the claim and test oath, the interest of the claimant in the property, and the inspection, by the claimant, of the ship's papers and the proofs *in preparatorio*. *The Bark Empress and Cargo*, Blatchf. Prize Cas. 146.

27. The defense in the claim must be limited to a contestation of the allegations of the libel. *Ib.*

28. It is irregular to subjoin to the claim anything besides a test oath. *Ib.*

29. Such irregularities will be corrected on motion, without formal exceptions. *Ib.*

30. (May, 1862.) A claim in a prize suit should be one of property merely, and should only put in issue, by a simple denial,

the validity of the capture. *The Ship Cheshire and Cargo*, Blatchf. Prize Cas. 151.

31. (Dec., 1862.) If the vessel and cargo are subject to condemnation, the claimants cannot contest in a prize court the competency of the libellants alone to control the proceeds of the forfeiture. *The Ship Gondar and Cargo*, Blatchf. Prize Cas. 266.

32. (Dec., 1862.) A claim and answer in a prize case should be confined to the issue of prize or no prize. *The Schooner John Gilpin and Cargo*, Blatchf. Prize Cas. 291.

33. (Dec., 1862.) A claim and answer in a prize suit cannot put in issue anything but the question of prize or no prize. *The Schooner Napoleon*, Blatchf. Prize Cas. 296.

34. Collateral subjects can be controverted in prize cases only by means of pleadings and further proofs, specially authorized by the court after a decision in the first issue. *Ib.*

35. (May, 1863.) A claimant in a prize suit can, under the rules of the court, cause the suit to be disposed of, if the libellants are guilty of any wrongful delay in its prosecution. *The Bark Springbok and Cargo*, Blatchf. Prize Cas. 349.

36. (July, 1863.) Suppression, in the test oath to the claim, of the fact that the claimants were resident traders in the enemy's country, it averring that they were citizens of the United States. *The Bark Sally Magee and Cargo*, Blatchf. Prize Cas. 382.

37. (July, 1863.) The fact that the test oath to the claim in this case is made not by the claimants but by their proctor, and the peculiar language of the proctor's affidavit, commented on. *The Bark Springbok and Cargo*, Blatchf. Prize Cas. 435.

38. (July, 1863.) A person who was a citizen of the United States, residing in Texas at the time of the breaking out of the war, and has never owed any allegiance to any foreign country, is to be regarded as a citizen of the enemy's country in prize proceedings, and cannot appear as a claimant in them, because he has no *persona standi* in court. *The Steamer Peterhoff and Cargo*, Blatchf. Prize Cas. 464.

39. Effect of a claim put in to prize property by underwriters who had insured it against capture. *Ib.*

40. (Dec., 1863.) Effect of a claim and answer in a prize suit, put in and verified by an agent, and not by the owner. *The Sloop D. Sargeant and Cargo*, Blatchf. Prize Cas. 576.

41. (Dec., 1846.) If the claimant be a citizen or an ally at the same time that he makes out his interest, he confesses the commission of an offense which, under a well-known rule of the civil law, deprives him of a right to prosecute his claim. *Ex turpi causa, non oritur actio.* *The Bark Coosa*, Newb. Adm. 393.

Rule 43. — Captors to libel Prize Property. Process.

The captors of property brought in or held as prize, or which may have been carried into a foreign port, and there delivered upon bail by the captors, shall forthwith libel the same in fact and sue out the proper process. The first process may, at the election of the party, be a warrant for the arrest of the property or person, to compel a stipulation to abide the decree of the court, or a monition.

Rule 44. — Monition, when returnable. Service.

The monitions shall be made returnable in ten days, and, if the property seized as prize is in port, shall be served in the same way as in the case of monitions issued on the instance side of the court of admiralty on seizures for forfeiture under the revenue laws. In case the property claimed as prize is not in port, then the monition is to be served on the parties in interest, their agent or proctor, if known to reside in the district, otherwise by publication daily in one of the newspapers of this city, for ten successive days preceding the return thereof.

1. (Nov., 1862.) In this case the court had condemned the cargo, but had withheld condemnation of the vessel, on the ground that no monition had been returned against her. Afterwards, the court, on the application of the libellants, made an order, under the forty-fourth admiralty rule of the Supreme Court, no notice by monition having been given to the owner of the vessel, and she not being in port, that the monition be served on the proctor for the owner. It having been so served, the proctor appeared in court and made, under oath, an exception in writing on behalf of the owner against the requirements of the monition, the district attorney at the same time moving for a decree of condemnation against the vessel for want of an answer to the libel. *Held*, that the proceedings were regular, and that the vessel must be condemned. *The Schooner Joseph H. Toone*, Blatchf. Prize Cas. 258.

Rule 45.—Matters incident to Prize. Libel or Claim.

Whenever the jurisdiction of the court is invoked upon matters as incident to prize, except as to the distribution of prize-money, there must be distinct articles or allegations in that behalf in the original libel or claim on the part of the party seeking relief. But in case the matters have arisen or become known to the party subsequent to presenting his libel or claim, the court will allow him to file the necessary amendments.

Rule 46.—Further Proof.

No permission will be granted to either party to introduce further proofs until after the hearing of the cause upon the proofs originally taken.

1. (Feb., 1818.) The captors are always competent witnesses, as to the circumstances of the capture, whether it be joint, collusive, or within neutral territory. *The Anne*, 3 Wheat. 435.

2. (Dec., 1865.) Cases of prize are usually heard, in the first instance, upon the papers found on board the vessel, and the examinations taken *in preparatorio*; and it is in the discretion of the court thereupon to make *sua sponte*, or not to make, an order for further proof. But the *claimant* may move for the order, and show the grounds of the application by affidavit or otherwise, at any time before the final decree is rendered; and such an order may also be made in this court. The making of it anywhere is controlled by the circumstances of each case. It is made with caution, because of the temptation it holds out for fraud and perjury; and made only when the interests of justice clearly require it. *The Sally Magee*, 3 Wall. 452.

3. (Dec., 1866.) Regularly, in cases of prize, no evidence is admissible on the first hearing, except that which comes from the ship, either in the papers or the testimony of persons found on board. *The Sir William Peel*, 5 Wall. 517.

4. If, upon this evidence, the case is not sufficiently clear to warrant condemnation or restitution, opportunity is given by the court, either of its own accord, or upon motion and proper grounds shown, to introduce additional evidence, under an order for further proof. *Ib.*

5. If, preparatory to the first hearing, testimony was taken of

persons not in any way connected with the ship, such evidence is properly excluded; and the hearing takes place on the proper proofs. *Ib.*

6. (Oct., 1812.) In prize causes the first hearing is to be on the ship's papers and the preparatory evidence of the ship's crew. If these acquit or condemn, there is an end of the cause. If they present a case of doubt or difficulty, further proof is admissible by order, or by plea and proof. Further proof sometimes allowed to the captors. *Ship Ann Green and Cargo*, 1 Gall. 274.

7. If the captured crew do not give up papers on the first examination in preparatory, the court will not admit them afterwards. If a witness suppress material facts on his examination in preparatory, he shall not be permitted to supply the defect by a supplementary affidavit. The commissioners to take the answers on the standing interrogatories should not rest satisfied with general answers, but require full and minute details of all material facts. *Ib.*

8. (May, 1813.) Further proof is never allowed to a party who is guilty of fraud, or of illegal conduct. It is granted only to honest ignorance or mistake. *Schooner Sally and Cargo*, 1 Gall. 400.

9. On further proof, the affidavits of the captors are admissible evidence without a release. *Ib.*

10. (Oct., 1813.) In cases of fraudulent concealment and falsification of papers, further proof is not allowed to the party. *Ship Liverpool Packet and Cargo*, 1 Gall. 513.

11. In what cases further proof allowed to captors. *Ib.*

12. (Oct., 1813.) Where, on the original preparatory evidence, the fact of capture is admitted, further proof ought not to be admitted, to create doubts as to the fact of capture. *Brig Alexander and Cargo*, 1 Gall. 531.

13. Further proof is never allowed to a party who shows himself *in delicto*. *Ib.*

14. (May, 1814.) Case of collusive capture. Further proof denied to the captors, and condemnation to the United States subject to the rights of the seizing officer. *The Bothnea*, 2 Gall. 78.

15. In what cases further proof allowed or not. *Ib.*

16. (May, 1814.) No commission to take evidence in an

enemy's country is allowable by the practice of the prize courts. *The Diana*, 2 Gall. 93.

17. (Oct., 1814.) On a monition to proceed to adjudication, the cause is to be heard in the same manner and upon the same principles as upon a libel by the captors; and consequently the *onus probandi* rests on the claimant. *The Rover*, 2 Gall. 240.

18. Where, after capture, the vessel has been recaptured by the enemy, and proceeded against in a court of prize, the court will not suffer a part of the papers from such court to be read, to show that there was no original cause of capture, unless the whole papers are produced. *Id.*

19. (Oct., 1814.) Under what circumstances further proof is admissible in cases of an asserted collusive capture. Further proof in prize causes is never admitted by way of oral testimony; but always by written evidence and depositions. *The George*, 2 Gall. 248.

20. (April, 1862.) A detailed statement supported by affidavits is required of any party who asks leave to offer new and independent proof. *The Amy Warwick*, 2 Sprague, 150.

21. This rule does not apply where it is only sought to meet with counter-proof, to the same points, evidence introduced by an opponent. *Id.*

22. In a case of further proof, the testimony was ordered to be taken in the form of depositions on interrogatories and cross-interrogatories, that being the more satisfactory form of proof. *Id.*

23. A motion for a second order for further proof was refused, because it was made at the final hearing (it being doubtful whether the motion could have been granted even if made at an early day), when it was known that the cause was to be carried up by appeal, and because such an order would occasion great delay, while it could be granted in the Circuit Court without delaying the final decision. *Id.*

24. (Aug., 1862.) A motion for leave to take further proof must set forth the specific facts to be proved, the sources of evidence, and the reasons for expecting it. Such motion refused to persons who had shown themselves unworthy of trust and belief. *The Cuba*, 2 Sprague, 168.

25. (Sept., 1862.) The admission of further proof rests wholly

in the discretion of the court ; but the exercise of this discretion is aided by certain rules. Some of these rules stated. A motion for further proof refused, where there was no reason to believe that any further evidence of value could be produced. *The Lilla*, 2 Sprague, 177.

26. (June, 1863.) By further proof is meant that which is derived from some other source than the vessel and cargo, and the papers and persons found on board. *Ship La Manche*, 2 Sprague, 216.

27. (Aug., 1861.) Cargo condemned as enemy property, unless further proof be furnished within ten days as to ownership of cargo. *The Schooner Hannah M. Johnson and Cargo*, Blatchf. Prize Cas. 2.

28. (Sept., 1861.) On special order of the court, the testimony of captors and witnesses present at the capture was allowed ; the master, crew, and passengers not having been sent in with the vessel, but having been inadvertently allowed to leave her near the place of capture. *The Schooner Falcon and Cargo*, Blatchf. Prize Cas. 52.

29. (Nov., 1861.) Further proof allowed to be given by the libellants on the question of violation of the blockade. *The Brig Sarah Starr and Cargo*, Blatchf. Prize Cas. 70.

30. (Dec., 1861.) The captors allowed to produce further proof on the question of breach of blockade. *The Schooner Prince Leopold and Cargo*, Blatchf. Prize Cas. 89.

31. (Jan., 1862.) Both parties were allowed to give further proof as to the intention to violate the blockade. *The Schooner Jane Campbell and Cargo*, Blatchf. Prize Cas. 101.

32. (March, 1862.) The vessel was pursued while attempting to violate the blockade. All on board of her escaped before she was taken. The court allowed other testimony to be given. Letters on board afforded a strong presumption that the vessel and cargo were enemy property. No claimant intervened. It not being probable that the papers of the vessel, or any of her crew, or any further proof could be produced, the court decreed condemnation of the vessel and cargo, the vessel having been appraised and taken for the use of the government in the Gulf of Mexico, where she was captured, and not having been brought within the district. *The Schooner Gipsev and Cargo*, Blatchf. Prize Cas. 126.

33. (March, 1862.) The further proof introduced by the libellants, on leave, to show an intent to violate the blockade, *Held*, not to establish such intent. *The Schooner Jane Campbell and Cargo*, Blatchf. Prize Cas. 130.

34. (July, 1862.) The rule of the English prize law is emphatic, that the absence of a bill of sale from the ship's papers, and the want of proof of payment of the purchase-money, in support of a claim by a neutral to an enemy vessel, are circumstances so strongly suspicious, and so vitally defective to a *bona fide* title to her, that the court, after condemnation of the vessel on the preparatory proofs, will not even allow further proof to be given in support of the title. *The Schooner Mersey and Cargo*, Blatchf. Prize Cas. 187.

35. (Sept., 1862.) Condemnation withheld, and proceedings suspended for sixty days, to allow the libellants to produce testimony in support of the libel, there being no testimony from witnesses present at the capture. *The Sloop Annie and Cargo*, Blatchf. Prize Cas. 209.

36. (Sept., 1862.) Cargo condemned, on further proof, for a violation of blockade by the vessel. *The Schooner Sarah & Caroline and Cargo*, Blatchf. Prize Cas. 214.

37. (Sept., 1862.) On further proof, vessel and cargo condemned as enemy property. *The Schooner Actor and Cargo*, Blatchf. Prize Cas. 215.

38. (Oct., 1862.) On further proof, vessel and cargo condemned for a violation of the blockade. *The Sloop Annie and Cargo*, Blatchf. Prize Cas. 222.

39. (Jan., 1863.) There being probable cause, on all the evidence, to believe that the vessel was engaged in an attempt to violate the blockade, the court suspended a final decision, with leave to the libellants to put in further proofs as to the place at which the capture was made, and as to the purpose of the voyage, at any time within one year. *The Schooner Levi Rowe and Cargo*, Blatchf. Prize Cas. 323.

40. (May, 1863.) An order was made by the court in this case that the marshal open the packages of cargo found on board of this vessel, covered by two of the bills of lading found on board, and take an inventory of their contents, their contents not being specified in any papers found on the vessel. *The Bark Springbok and Cargo*, Blatchf. Prize Cas. 349.

41. The right of a belligerent to visit and search a neutral vessel in time of war implies a power in the prize court of the belligerent to which a captured neutral vessel is sent for adjudication, to order, under reasonable precautions and forbearance, an examination of the cargo sufficient to ascertain its character, and then to employ evidence so acquired, as further proof to establish the culpability of the voyage. *Ib.*

42. (May, 1863.) Rehearing on further proofs furnished by the claimant of seven eighths of the vessel. *The Schooner Napoleon*, Blatchf. Prize Cas. 357.

43. (May, 1863.) A rehearing on further proofs denied to the claimant. *The Schooner Mary Jane and Cargo*, Blatchf. Prize Cas. 363.

44. (June, 1863.) Leave given to the claimants to move within four days for a rehearing on further proofs. *The Schooner Rising Dawn and Cargo*, Blatchf. Prize Cas. 368.

45. (July, 1863.) Vessel and cargo released from seizure and restored to the claimants, without damages or costs, with permission to the libellants to move for leave to give further proofs on the above points [of complicity, &c.]. *The Brig Isabella Thompson and Cargo*, Blatchf. Prize Cas. 377.

46. (July, 1863.) The spoliation of papers is a strong circumstance of suspicion. It is not, however, either in England or in the United States, held to furnish, of itself, sufficient ground for condemnation, but is a circumstance open to explanation. But if the explanation be not prompt and frank, or be weak and futile, if the cause labors under heavy suspicions, or if there be a vehement presumption of bad faith or gross prevarication, it is good ground for the denial of further proof, and the condemnation ensues from defects in the evidence which the party is not permitted to supply. *The Schooner Stephen Hart and Cargo*, Blatchf. Prize Cas. 388.

47. (July, 1863.) The privilege of further proof is always forfeited where there has been any deception or fraud. *The Bark Springbok and Cargo*, Blatchf. Prize Cas. 435.

48. (July, 1863.) A document produced for the first time at the hearing, and forming no part of the depositions in the case, is not admissible in evidence. *The Steamer Peterhoff and Cargo*, Blatchf. Prize Cas. 464.

49. Although such document, if properly put in evidence,

would be regarded by the court as a very material piece of evidence against the vessel and her cargo, yet the court did not, upon the proofs in the case, entertain any such doubt upon the question of condemning the vessel and cargo, as to make it proper to direct an order for further proof in order to permit the introduction in evidence of the document. *Ib.*

50. (Oct., 1863.) In this case, no witnesses having been sent in with the vessel, and no reason being furnished for not producing them, and the commander of the capturing vessel being examined by order of the court, but not furnishing any proof of any violation of the blockade, or that the captured property was enemy property, the court ordered the case to stand over for further proof as to the criminality of the vessel, and in order that the absence of all evidence from on board of her might be accounted for, and allowed six months time for that purpose. *The Sloop Nellie and Cargo*, Blatchf. Prize Cas. 553.

51. (July, 1863.) Further proof ordered as to the neutral ownership of the cargo; and further proof allowed as to the proprietary interests in the vessel, the vessel and cargo being claimed by the same party. *The Ship Alliance and Cargo*, Blatchf. Prize Cas. 646.

52. (July, 1863.) Further proof ordered as to the neutral ownership of the vessel and cargo at the time of capture. *The Ship Gondar and Cargo*, Blatchf. Prize Cas. 649.

53. (July, 1863.) Decree of District Court, so far as it condemned the vessel and all of the cargo except 504 bags of coffee, affirmed. As to the 504 bags of coffee, further argument ordered as to the proprietary interest therein; and either party allowed to produce further proof upon it. *The Schooner Lynchburg and Cargo*, Blatchf. Prize Cas. 659.

54. (Nov., 1863.) Hearing, on further proof, as to the claim by one of the owners of the vessel and cargo that he was, at the time of the breaking out of the war, and at the time of the capture, a resident consul, at Richmond, of the empire of Austria, recognized by this government; that his interest is not to be regarded as enemy property, inasmuch as he intercepted the vessel and cargo while on their way to a blockaded port of the enemy, and took measures to send them to a loyal port, and had thus done everything in his power to withdraw his property from the enemy's country; that while in the act of being withdrawn

it was not liable to capture; and that he was not bound to follow it, as his duty as consul, and his right under a treaty between the United States and Austria, justified and satisfactorily explained his continued residence in the enemy's country. *The Bark Pioneer and Cargo*, Blatchf. Prize Cas. 666.

55. (Jan., 1864.) On further proof the vessels and cargoes were held to be neutral property, and ordered to be restored to the claimants. *The Ship Gondar and Cargo*.—*The Ship Alliance and Cargo*, Blatchf. Prize Cas. 669.

56. (Dec., 1846.) The court will refuse an application for further proof, where the claim and test affidavit of the claimant are utterly at variance with his answers to the standing interrogatories. *The Cargo of the Schooner El Telegrafo*, Newb. Adm. 383.

57. The greatest solemnity is attached to examinations *in preparatorio*. The standing interrogatories are of a searching character, and well calculated to elicit truth and detect fraud; and the reasons must be cogent indeed, that would induce the court to deviate from the established practice, and permit a claimant, by further proof, to contradict his own declarations made under the solemnity of an oath, touching a fact so important as domicile or national character. *Ib.*

Rule 47.—Libel to contain Name of Officer of Public Vessel capturing Prize.

In case of captures by the public armed vessels of the United States, and a proceeding for condemnation against the property seized as prize *jure belli*, or in the nature of prize of war, under any act of Congress, the name of the officer under whose authority the capture was made must be inserted in the libel.

Rule 48.—Decree of Contumacy. Attachment.

A decree of contumacy may be had against any party not obeying the orders or process of the court, duly served upon him; and thereupon an attachment may be sued out against him. But no constructive service of a decree or process *viis et modis*, or *publica citatio*, will be sufficient, unless there has been a publication thereof in a daily paper in this city at least ten days immediately preceding the motion for an attachment.

1. (Feb., 1808.) Every sentence of condemnation by a competent court, having jurisdiction over the subject-matter of its judgment, is conclusive as to the title to the thing claimed under it. *Rose v. Himely*, 4 Cranch, 241.

2. (Feb., 1808.) No foreign court can question the correctness of what is done, unless the court passing the sentence loses its jurisdiction by some circumstance which the law of nations can notice. *Hudson v. Guestier*, 4 Cranch, 293.

3. (Feb., 1815.) Property unclaimed will be decreed as good prize. *Schooner Adeline*, 9 Cranch, 246.

4. (Feb., 1818.) Where a neutral shipowner lends his name to cover a fraud with regard to the *cargo*, this circumstance will subject the *ship* to condemnation. *The Fortuna*, 3 Wheat. 236.

5. (Feb., 1825.) After a general decree of restitution in this court, the captors, or purchasers under them, cannot set up in the court below new claims for equitable deductions, meliorations, and charges, even if such claims might have been allowed, had they been asserted before the original decree. *The Santa Maria*, 10 Wheat. 431.

6. Nor can the claimants, or original owners, in such a case, set up a claim for interest upon the stipulation taken in the usual form, for the appraised value of the goods, interest not being mentioned in the stipulation itself. *Ib.*

7. Nor can interest be decreed against the captors personally, by way of damages for the detention and delay, no such claim having been set up, upon the original hearing in the court below, or upon the original appeal to this court. *Ib.*

8. The case of *Rose v. Himely*, (5 Cranch, 313) reviewed, explained, and confirmed. *Ib.*

9. (Feb., 1826.) Explanation of the former decree of the court in the same cause, *ante*, Vol. X., p. 66. *The Antelope*, 11 Wheat. 413.

10. (Oct., 1813.) If the party filing a libel against property, as prize of war, is not entitled to it, condemnation will go to the United States. *Cargo of Ship Emolous*, 1 Gall. 563.

11. The like law prevails on a suit *in rem* by an informer, whose title fails, under a municipal seizure. *Ib.*

12. (May, 1815.) If, upon the ship's papers, it be doubtful whether the property captured as prize belong to an enemy,

it is not usual to proceed immediately to condemnation, although no claim be interposed. But if, in such case, no claim is interposed within a year and a day, condemnation is of course to the captors. *The Avery*, 2 Gall. 386.

13. (April, 1862.) Where a neutral has a *jus in re*, where he is in possession with a right of retention until a certain amount is paid to him, the captor takes *cum onere*, and should allow the amount of such right. But where the neutral has merely a *jus ad rem*, which he cannot enforce without the aid of a court of justice, his claim will not be recognized by a prize court. *The Amy Warwick*, 2 Sprague, 150.

14. (Sept., 1861.) The practice in American prize courts is to make final condemnation of enemy property at the hearing of the cause, upon the ship's papers and the evidence *in preparatorio*. *The Schooner Falcon and Cargo*, Blatchf. Prize Cas. 52.

15. The suspension of a year and a day after a default, is allowed only when it is doubtful upon the evidence whether the property captured belongs to the enemy or is neutral. *Ib.*

16. (May, 1862.) The court, during the present war, always regards, by force of the standing prize rules, a decree by default, regularly obtained, as equivalent to an admission on the record of the offense charged in the libel. *The Schooner Zavalla and Cargo*, Blatchf. Prize Cas. 173.

17. Destruction or spoliation of papers on board, not explained by satisfactory proof, and also the enemy property of the prize, supply legal causes for its condemnation and forfeiture. *Ib.*

18. (Dec., 1862.) This court, as a prize court, has no power to open a decree after the expiration of the term or session in which it was rendered. *The Schooner Lizzie Weston and Cargo*, Blatchf. Prize Cas. 265.

19. (Dec., 1862.) A motion to redeliver to the master his nautical instruments, denied; he having been actively engaged in acts of hostility against the rights of the United States and the public law. *The Steamer Ouachita and Cargo*, Blatchf. Prize Cas. 306.

20. (Jan., 1863.) After the lapse of the term in which a decree is rendered in a prize case, the authority of the court to revoke or alter it is extinct. *The Schooner Major Barbour and Cargo*, Blatchf. Prize Cas. 310.

21. (May, 1863.) One eighth of the vessel being condemna-

ble in any event, the libellants have a right to enforce their remedy against her as an entirety, whether they retain or remit the proceeds. *The Schooner Napoleon*, Blatchf. Prize Cas. 357.

22. (Oct., 1863.) The vessel having been captured within five miles of the enemy's coast, and about 150 miles off her true course as designated on her papers, and no excuse being given for the deviation, and her cargo consisting partly of articles contraband of war, and wholly of supplies of urgent importance to the enemy, and no claim being interposed to the vessel and cargo although the master was brought in and examined as a witness, the court ordered condemnation of vessel and cargo, unless their owner should, on application, obtain leave, prior to the third regular term after such order, to interpose a claim to the merits of the libel. *The Schooner Nymph and Cargo*, Blatchf. Prize Cas. 564.

23. The libellants were allowed, meantime, to take an order for the sale of the prize property. *Ib.*

24. (Dec., 1846.) If, upon the return of the monition, no person appears to assert a claim to the vessel and cargo, the proctor of the captors may move for a decree upon the evidence as it appears on the record. *The Bark Coosa*, Newb. Adm. 393.

Rule 49. — Decree for Damages. Commissioners to assess Damages.

When damages are awarded by the court, the party entitled thereto may move for the appointment of three commissioners to assess the same; two persons approved by the court will thereupon be associated with a standing commissioner of the Circuit Court, the clerk or deputy clerk of this court, if not interested in the matter, whose duty it shall be to estimate and compute the damages, in conformity to the principles of the decree, and return a specific report to the court of the amount of damages, and the particular items of which they are composed.

1. (Dec., 1865.) Prize courts properly deny damages or costs, where there has been "probable cause" for seizure. *The Thompson*, 3 Wall. 155.

2. Probable cause exists where there are circumstances sufficient to warrant suspicion, even though not sufficient to warrant condemnation. *Ib.*

3. These principles applied to a case before the court, where a captured vessel was restored, but without costs or damages. *Ib.*

4. (Oct., 1812.) Where it is referred to commissioners to state the amount of damages, in a case of illegal capture, the report should be special, and state the items of the allowances in detail. *Schooner Lively and Cargo*, 1 Gall. 315.

5. Where an injury is alleged to the cargo after it came to the possession of the captors, it should be ascertained, under the direction of the prize court, by a survey and appraisement or sale. *Ib.*

6. Commissioners appointed to state damages should not hear *ex parte* evidence without notice to the other party. *Ib.*

7. (Jan., 1862.) The captors held liable in damages for unjustifiable conduct towards the crew and property of the prize after her arrest. Reference to the prize commissioners to ascertain the damages. *The Schooner Jane Campbell and Cargo*, Blatchf. Prize Cas. 101.

8. (March, 1862.) The question discussed, as to the proper method of investigating, in prize cases, acts of misconduct committed by captors on the prize property and the officers and crew of the vessel subsequent to their arrest. *The Schooner Louisa Agnes and Cargo*, Blatchf. Prize Cas. 107.

9. The court establishes this practice: that the right of reclamation for damages, in cases of captures made by public vessels, must be pursued by the parties averring the grievance and tort committed upon them, by plea and proof, which admit of counter-allegations and full evidence under them. *Ib.*

10. Claimants ordered to sue out a monition to the captors, and file and serve the allegations and proofs on which they claim damages. *Ib.*

11. (Oct., 1862.) Redress for wrongs committed by the captors, or for want of diligence in proceeding to the trial of the case, cannot be had by way of defense in the prize suit. It must be sought for by proper pleadings and further proof. *The Schooner Joseph H. Toone and Cargo*, Blatchf. Prize Cas. 223.

Rule 50.—Review of Assessment of Damages.

Any party aggrieved may have such assessment of damages reviewed in a summary manner by the court, before final decree rendered thereon, on giving two days' previous notice to the proctor of the party in whose favor the assessment is made, of the exceptions he intends taking, and causing to be brought before the court the evidence given the commissioners in relation to the particular excepted to.

Rule 51. — Appeal.

Every appeal from the decrees of this court must be made within ten days from the time the decree appealed from is entered, otherwise the party entitled to the decree may proceed to have it executed. No appeal shall stay the execution of a decree, unless the party, at the time of entering the appeal, gives a stipulation, with two sureties, to be approved by the clerk, in the sum of two hundred and fifty dollars, to pay all costs and damages that may be awarded against him, and to prosecute the appeal to effect.

1. (Jan., 1865.) An appeal to the Supreme Court from the decree of this court in a prize cause removes the cause from this court, and places the prize property exclusively under the control of the appellate tribunal. *The Steamer Peterhoff and Cargo*, Blatchf. Prize Cas. 620.

2. Pending an appeal to the Supreme Court, in a prize cause, the District Court refused to order the costs of the prize commissioner to be paid out of the funds in this case. *Ib.*

3. (May, 1863.) In this case the prize property was condemned in the District Court, and a sale of it was ordered. The claimant appealed to the Circuit Court, from the decree of condemnation, and then applied to the Circuit Court to stay the sale, which was in progress, on the ground that the appeal operated to remove the cause into the Circuit Court, and thereby deprived the District Court of jurisdiction to issue an execution or to make a sale of the property under the decree of condemnation in that court. The Circuit Court ordered the sale to be stayed, and all proceedings under the decree below to be set aside. *The Steamer Sunbeam and Cargo*, Blatchf. Prize Cas. 638.

4. The 12th section of the act of July 17, 1862 (12 Stat. 608), and the 4th section of the act of March 25, 1862 (Id. 375), considered. *Ib.*

5. There is nothing in either of those acts which changes the general rules of practice, that no sale can take place under a decree of condemnation in the District Court, duly appealed from, that a decree thus appealed from is not a final decree; and that, after the appeal, the cause, with the *res*, is in this court, and subject to its jurisdiction alone. *Ib.*

Rule 52.—Delay in preparing Transcript on Appeal.

If the party appealing is afterwards guilty of unreasonable delay in having the necessary transcripts and proceedings prepared for removing the cause, it will be competent to the other party to move the court for leave to execute the decree, notwithstanding the appeal.

Rule 53.—Property in Custody of Court.

In all cases of process *in rem*, the property after arrest is deemed in the custody of the court, and the marshal cannot surrender it on bail, or otherwise, without the special order of the court.

Confederate States Prize Court.

1. (Sept., 1862.) The proceedings of a prize court of the so-called Confederate States are of no validity here, and a condemnation and sale by such a court do not convey any title to the purchaser, or confer upon him any right to give a title to others. *The Lilla*, 2 Sprague, 177.

Costs in Prize Cases.

1. (May, 1813.) Where a claim is rejected, the claimant is liable to pay all expenses which have accrued in consequence of his claim; but not such as arise in the cause independently of it. *Schooner Sally and Cargo*, 1 Gall. 401.

2. Of the clerk's fees, marshal's fees, and custody fees, what allowable, and when a charge on the property. *Id.*

3. (June, 1813.) Practice as to costs to be taxed on several claims in one information, upon a remission of the forfeiture. *Ship Francis and Cargo*, 1 Gall. 453.

4. (May, 1814.) Of the rule for apportionment of costs among the several claimants in prize causes. *The Hiram and The Hero*, 2 Gall. 59.

5. (Oct., 1814.) Money deposited in a bank, under a decree of the court, and subject to its order, is "money deposited in court" within the meaning of the act of 1793, ch. 20, sec. 2. And the clerk is entitled to commissions upon such money in the same manner as if it had actually been paid into his hands. *Ex parte Prescott*, 2 Gall. 146.

6. (Oct., 1814.) The marshal is entitled to his full commissions, according to the act of 1799, ch. 125, upon all interlocutory sales of prize property. The act of Jan. 27, 1813, ch. 155, applies only to sales after final condemnation. *The Avery*, 2 Gall. 308.

7. The clerk is entitled to commissions upon proceeds of prize property sold by interlocutory order, and paid into court by the marshal. *Ib.*

8. (Oct., 1814.) The marshal is entitled to commissions upon prize property removed from his district, by consent of parties, to another district, and there sold. *The S. J. Indiano*, 2 Gall. 311.

9. (Nov., 1814.) In what manner the fees taxed for the district attorney are to be distributed, where part of the services have been performed in the time of one district attorney and part in the time of his predecessor. *Ex parte Robbins*, 2 Gall. 319.

10. (March, 1862.) Where property is captured under circumstances showing a clear case of enemy's property, and the evidence in preparatory is to the same effect, and the claimants are allowed further proof, on which their property is restored to them, it will be on the terms of paying the costs and expenses of the captors. The same rule does not apply to instance cases. *The James Andrews*, 2 Sprague, 121.

11. (May, 1862.) Auctioneers' fees in prize causes. *The Amy Warwick*, 2 Sprague, 160.

12. (Sept., 1863.) When a vessel is taken by the Secretary of the Navy under the act of 1863, the marshal is not entitled to his fees in the case of a sale, or to half commissions, as he is when the case is settled without a sale. *The Victory*, 2 Sprague, 226.

13. (Sept., 1862.) The following principles of allowance will be applied in the taxation of costs in prize cases:—

(1.) No specific tariff of fees having been appointed to the suits by statute, the costs fixed by statute for similar services in admiralty will be allowed in this court, except as otherwise directed by acts posterior to the fee-bill of Feb. 26, 1833.

(2.) The compensation directed to be made by the act of March 25, 1862, to the officers therein named, will be computed and adjusted, as nearly as may be, conformably to allowances by the laws of the United States to employes for like services under

the government, or in accordance with established rules and usages of the courts in regard to their officers rendering like services. In cases of doubt or difficulty, evidence may be taken on the question of *quantum meruit*.

(3.) The gross costs taxed to any of the officers of court for services in prize suits will be, in collection or payment, subject to all limitations, as to amounts or periods of payment, under the acts of Congress in force at the time of such taxation.

(4.) The method of ascertaining the compensation of any of the officers of court for their services in prize suits, by a percentage on the value of the property coming officially into their possession or under their charge, will not be adopted by the court without express authority of law, or the assent thereto, in writing, by the parties whose interests are to be affected thereby. *Costs, &c., in Prize Cases*, Blatchf. Prize Cas. 206.

14. (Jan., 1863.) The question of the allowance by the court of costs and fees to counsel and officers in prize cases discussed. *The Schooner Major Barbour and Cargo*, Blatchf. Prize Cas. 310.

15. The court having at a previous term made a final decree distributing the proceeds of sale in the case, and awarding costs to various parties, a motion to re-open the question of costs was denied. *Ib.*

16. (Jan., 1863.) Property captured as prize at Newbern, North Carolina, having been shipped to New York by the captor on board of a merchant vessel on freight under a bill of lading signed at the time, conditioned for its delivery at New York on payment of the freight therein stipulated, the court ordered the freight to be paid by the marshal out of the proceeds of the property in court. *Eight Hundred and Fifty-eight Bales of Cotton, &c.*, Blatchf. Prize Cas. 325.

17. (May, 1863.) The marshal is not authorized to appoint an auctioneer to conduct a judicial sale, at the expense of the government or of a private party, without the consent of the party for whose benefit the service is performed. *The Steamer Tubal Cain and Cargo*, Blatchf. Prize Cas. 347.

18. Any custom or usage to that effect rests only on the direct consent of the party using the process of sale. *Ib.*

19. An auctioneer cannot have costs or disbursements taxed in his favor by the court, *in invitum*, against the libellants or

claimants personally, or against the *res*, nor can the auctioneer's charges be taxed to the marshal as a part of his disbursements. *Ib.*

20. (Jan., 1864.) An appraiser appointed by the court on the application of the claimant, to appraise the prize property, with a view to its delivery on bail to the claimant, not having been paid his compensation, applied to the court to tax his costs for the service and direct them to be paid out of the proceeds of the property; but the application was denied. *The Bark Sally Magee and Cargo*, Blatchf. Prize Cas. 596.

21. The charges of appraising and bonding such property must be borne by the party who applies to have it bonded. *Ib.*

22. The appraiser having charged one per cent on the value of the property appraised, and the prize commissioners having reported that one half of that amount would be a proper compensation, — *Held*, that the appraiser had no right to demand a *quantum meruit* for his services, or any further reward than the *per diem* allowance provided by statute or the standing rules of the court for that description of services. *Ib.*

23. (May, 1862.) Pending the appeals in these cases from decrees of condemnation, an order was made by the Circuit Court, at the instance of the claimants, for bonding the vessels. They were appraised for that purpose, and the bonds were tendered, when the marshal intervened, and claimed payment of his fees and disbursements in the seizure and subsequent safe-keeping of the vessels, and also for wharfage, towage, &c., or at least that the claimants pay into court a sum of money to cover these fees and expenses. *Held*, that the claimants were, thus far, liable for nothing but the expenses of bonding the vessel. *The Schooner Aigburth*. — *The Brig Sarah Starr*, Blatchf. Prize Cas. 635.

24. Under the act of March 25, 1862, (12 Stat. 374,) the claimant is not responsible for the costs and expenses attending the seizure, detention, and safe custody of property seized as prize, unless there is a decree of condemnation, or of restitution on payment of costs. *Ib.*

Court of Appeals.

1. (Feb., 1809.) The Court of Appeals in prize causes, erected by the Continental Congress, had power to revise and correct the

sentences of the state courts of admiralty. *United States v. Judge Peters*, 5 Cranch, 115.

2. (April, 1804.) The captured, who has omitted to enforce a decree of a superior court, reversing the decree of a court of admiralty, cannot claim as damages the loss he may have sustained by a depreciation of the funds in which the proceeds of the capture may be invested. He should have applied to the court below to enforce the decree of the Court of Appeals; and, omitting to do so, the loss will fall upon him. *Carson's Executors v. Jennings*, 1 Wash. 129.

Distribution of Prize.

1. (Feb., 1818.) Irregularities on the part of the captors, originating from mere mistake, or negligence, which work no irreparable mischief, and are consistent with good faith, will not forfeit their rights of prize. *The Anne*, 3 Wheat. 435.

2. (1866.) A court of prize has power to give salvage in lieu of prize money to persons not of the navy, who have rendered valuable service in making a capture. *The Deer*, 1 Lowell, 95.

3. (July, 1864.) It appearing that the prize property was captured by a United States steam transport ship, no other vessel co-operating therein, or being within signal distance at the time, and that the prize vessel was of inferior force, the court, to carry into effect the act of June 30, 1864, allowing vessels not of the navy to share in a prize in certain cases, referred it to a commissioner to report the names and employments of the captors on board the transport ship present and engaged in the capture, and the relative compensations properly allowable to them severally. *The Steamer Emma and Cargo*, Blatchf. Prize Cas. 607.

Mail Bag found on Prize Vessel.

1. (July, 1863.) On motion of the district attorney, acting under instructions from the government, a mail bag, under the official seal of the General Post-office of Great Britain, found on board of the prize vessel, was ordered by the court to be delivered to the district attorney, to be by him disposed of conformably to the instructions of the government. *The Steamer Peterhoff and Cargo*, Blatchf. Prize Cas. 463.

Practice in Prize Cases. Miscellaneous.

1. (Feb., 1816.) An agreement in a court of common law, chancery, or prize, made under a clear mistake, will be set aside. *The Hiram*, 1 Wheat. 440.

2. (Feb., 1816.) General principles of the practice in prize causes. 1 Wheat. Appendix, note II. 494-506.

3. (Feb., 1823.) Whoever sets up a title under any condemnation as prize, is bound to produce the libel or other equivalent proceeding under which the condemnation was pronounced, as well as the sentence of condemnation itself. *La Nereyda*, 8 Wheat. 108.

4. (Oct., 1814.) Usually a claim is given before a monition is taken out against the captors; but there may be an original proceeding as in this case. There ought, however, to be an affidavit, and, on motion, the court would put the libellant upon his corporal oath. *The Rover*, 2 Gall. 240.

5. (Oct., 1814.) Practice as to payment of prize shares to special agents. *The S. J. Indiano*, 2 Gall. 311.

6. (May, 1815.) The removal of prize goods is an irregularity, but is indulged under certain circumstances. *The Arabella*, 2 Gall. 368.

7. (Oct., 1868.) Great laxity is tolerated in proceedings in prize courts; and irregularities, such as the captors not being parties, and not bringing the prize into court for adjudication, may be corrected. *United States v. 269½ Bales of Cotton*, Woolw. 236.

8. There are certain reasons founded on the general principles of international law, why every capture on the high seas, *jure belli*, shall be carried before a prize court. *Ib.*

9. (Dec., 1861.) The practice in prize proceedings in the courts of the United States is governed by the rules of admiralty law disclosed in the English reports, when not regulated by decisions or rules of American courts. *The Schooner Prince Leopold and Cargo*, Blatchf. Prize Cas. 89.

10. (April, 1862.) The rules of practice in admiralty are the basis of the practice in prize in our national courts. *The Schooner Wave and Cargo*, Blatchf. Prize Cas. 148.

11. (Oct., 1863.) The proper practice suggested on references to ascertain what vessels are entitled to share in a prize. *The Steamer Anglia and Cargo*, Blatchf. Prize Cas. 566.

STANDING INTERROGATORIES IN PRIZE CASES.

Standing Interrogatories.¹

Standing interrogatories to be administered by a prize commissioner to all persons that may be produced as witnesses to be examined in preparatorio, in relation to any ship or vessel, goods, wares, or merchandise, which may be captured or taken as prize and brought into the Southern District of New York.

Let each witness be interrogated to every of the following questions, and their answers to each interrogatory be written down under his direction and supervision: —

1. Where were you born, and where do you now live, and how long have you lived there? Of what prince or state are you a subject or citizen, and to which do you owe allegiance? Are you a citizen of the United States of America? Are you a married man, and if married, where do your family and wife reside?

2. Were you present at the capture or taking of the vessel, or her lading, or any of the goods or merchandises concerning which you are now examined?

3. When and where was such seizure and capture made, and into what place or port were the same carried? Had the vessel so captured any commission, or letters, authorizing her to make prizes? What and from whom? For what reasons or on what pretense was the seizure made?

4. Under what colors did the captured vessel sail? What other colors had she on board, and for what reason had she such other colors?

5. Was any resistance made at the time of the capture, and by whom? Were any guns fired, how many, and by whom? By what ship or ships was the capture made? Were any other and what ships in sight at the time of the capture? Was the vessel captured a merchantman, a ship-of-war, or acting under any commission as a privateer or letter of marque and reprisal, and to whom did such vessel belong? Was the capturing vessel a ship-of-war, a letter of marque and reprisal, or privateer, and of what force?

¹ For interrogatories in prize cases, see appendix to Blatchford's Prize Cases, also appendix to 2 Wheaton's Reports, and appendix to 2 Sprague's Reports.

6. Had the capturing vessel or vessels any commission to act in the seizure or capture of the vessel inquired about, and from whom, and by what particular vessel was the capture made? Was the vessel seized condemned, and if so, when and where, and for what reason, and upon what account, and by whom, and by what authority or tribunal was she condemned?

7. What was the name of the vessel taken, and of her master or commander? Who appointed him to the command of the said vessel, and where? How long have you known the vessel and him, and when and where did he take possession of her, and who by name delivered the same to him? Where is the fixed place of abode of the master, with his wife and family, and how long has he lived there? If he has no fixed place of abode, where was his last place of residence, and how long did he live there? Where was he born? Of what country or state is he a subject or citizen?

8. Of what tonnage or burden is the vessel which has been taken, and about which you are examined? What number of the vessel's company belonged to her at the time she was seized and taken, and how many were then actually on board her? What countrymen are they? Did they all come on board at the same port and time, or at different ports and times, and when and where? Who shipped or hired them, and when or where?

9. Did you belong to the company of the vessel so captured at the time of her seizure, and in what capacity? Had you, or any of the officers, or mariners, or company belonging to the said vessel at the time of her capture, any part, share, or interest in the same, or in the goods or merchandise laden on board her, and what in particular, and what was the value thereof at the time the said vessel was captured, and the said goods seized?

10. How long have you known the said vessel? When and where did you first see her? How many guns did she carry? How many men were on board of her at the beginning of the engagement, before she was captured? Of what country build was she? What was her name, and how long was she so called? Whether do you know of any other name she was called by, and what were such names, as you know or have heard?

11. To what ports and places was the vessel, concerning which you are now examined, bound on the voyage wherein she was taken and seized? Where did the voyage begin, and where was the voyage to have ended? What sort of lading did she carry at the time of her first setting out on the voyage, and what particular sort of lading and goods had she on board at the time she was taken and seized? In what year and in what month was the same put on board? Do you or not know

she had on board during her last voyage, and when, goods contraband of war, or otherwise prohibited by law, and what goods?

12. Had the vessel of which you are examined any passport or sea-brief on board, and from whom? To what ports or places did she sail during her last voyage, before she was taken? Where did her last voyage begin, and where was it to have ended? Set forth the kind of cargoes the vessel has carried to the time of her capture, and at what ports such cargoes have been delivered. From what ports, and at what time, particularly from the last clearing port, did the said vessel sail, previously to the capture?

13. What lading did the vessel carry at the time of her first setting sail in her last voyage, and what particular sort of lading and goods had she on board at the time she was taken? In what year and in what month was the same put on board? Set forth the different species of the lading and the quantities of each sort.

14. Who were the owners of the vessel and goods, concerning which you are now examined, at the time of their capture and seizure? How do you know they were owners thereof at that time? Of what nation or country are they by birth, and where do they live with their wives and families? How long have they resided there? Where did they reside previously, to the best of your knowledge? Of what country or state are they subjects or citizens?

15. Was any bill of sale given, and by whom, to the owners of the said vessel, and in what month and year? Where, and in the presence of what witnesses, was it made? Was any, and what engagement entered into concerning the purchase, further than what appears upon the bill of sale? Where did you last see it, and what has become of it?

16. In what port or place, and in what month and year, was the lading found on board the vessel at the time of her capture or seizure, first put on board her? What were the names of the respective laders or owners, or consignees thereof? What countrymen are they? Where did they reside before, to the best of your knowledge, and where were the said goods to be delivered, and for whose real account, risk, or benefit? Have any of the said laders or consignees any and what interest in the said goods? What were the several qualities, quantities, and particulars of the said goods, and have you any and what reason to know or fully believe that if the said goods shall be restored and unladen at the destined ports, they did, do, and will belong to the same persons, and to none others?

17. How many bills of lading were signed for the goods seized on board the said vessel? Were any of those bills of lading false or colorable, or were any bills signed which were different in any respect

from those which were on board the vessel at the time she was taken? What were the contents of such other bills of lading, and what became of them?

18. Have you in your possession, or were there on board of the said vessel at the time of her capture, any bills of lading, invoices, letters, or other writings, to prove or show your own interest, or the interest of any other person, and of whom, in the vessel or in the goods concerning which you are now examined? If in your power produce the same, and set forth the particular times when, where, and in what manner, and upon what consideration, you became possessed thereof. If you cannot produce such paper evidences, then state in whose possession you last saw them, or where you know or believe they are kept, and when and by whom they were brought or sent within this district, and also set forth the contents or purport of such papers.

19. State the degrees of latitude and longitude in which the said vessel and her cargo were captured, as also the year, month, and day, and time thereof, in which such seizure was made, and in or near what port or place, and whether it was a port of any state or territory of the United States of America, and what one. Was any charter-party for the voyage upon which the said vessel was captured, signed, and executed, and by whom and when? If in your possession, produce the same. If not, set forth its contents and state what has become of it.

20. What papers, bills of lading, letters, or other writings relating to the vessel or cargo, were on board the vessel at the time she took her departure from her last clearing port, before she was taken as prize? Were any of them burnt, torn, thrown overboard, destroyed, or canceled, or attempted to be concealed, and when, and by whom, and who was then present?

21. Did you or the owner, master, or person having command of the said vessel or her navigation, at the time and place of her capture, know or have any notice that such place or port was in a state of war with the United States, and that the naval forces of the United States held such port in a state of blockade? How, when, or where had you such knowledge or notice, and when and where did the master or commandant of said vessel obtain it?

22. Was such port under an order of blockade by the government of the United States, at the time the said vessel entered or made an attempt to enter the same? Had warning or notice of such blockade been given to, or received by the owner, master, or commandant of the said vessel, before or at the time she entered, or attempted to enter the said port, and when, and in what manner? Had notice in writing been indorsed on the register or other ship's papers of the vessel, and when, where, and by whom, of an existing blockade of

such port, before she entered, or attempted to enter the same, or before the time of her sailing, or attempting to sail therefrom?

23. Was the register of the vessel, about which you are examined, shown to, or examined by any officer of the United States navy, or by any revenue officer of the United States, before she was captured and taken, and before she entered the port at, or near which, she was taken and seized, and was the register, or other ship's papers, indorsed by said United States officer? Declare fully all you know, or have reason to believe, respecting this interrogatory, stating the persons, times, and places connected therewith.

24. Do you know, or do you believe from information, and if the latter, from what information, and when and how was it obtained, that the vessel inquired about, at any time or times, after the blockade of the said port, and with notice thereof, and when, attempted covertly and secretly to enter the said blockaded port, or to sail therefrom, without success? Disclose fully all your knowledge, information, and belief thereon, with the particulars upon which the same is founded.

25. Has the vessel, concerning which you are now examined, been at any time, and when, seized as prize and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned.

26. Have you sustained any loss by the seizing and taking the vessel concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction, or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when and from whom?

27. Is the said vessel or goods, or any, and what parts, insured? If yea, for what voyage is such insurance made, and at what premium, and when and by what persons, and in what country was such insurance made?

28. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

29. Let each witness be interrogated of the growth, produce, and manufacture, on board the vessel. Of what country and place was the lading, concerning which they are now interrogated, or any part thereof?

30. Whether all the said cargo, or any and what part thereof, was taken from the shore, or quay, or removed, or transhipped from one vessel to another, from what and to what shore, quay, and vessel, and when and where was the same so done?

31. Are there in any country besides the United States, and where, or on board any and what vessel, or vessels, other than the vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers, or documents, relative to the said vessel or cargo, and of what nature are they, and what are their contents?

32. Were any papers delivered out of the said vessel, and carried away in any manner whatsoever, and when, and by whom, and to whom, and in whose custody, possession, or power do you believe the same now are?

33. Was bulk broken during the voyage on which you were taken, or since the capture of the said vessel, and when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

34. Were any passengers on board the aforesaid vessel? Were any of them secreted at the time of the capture? Who were the passengers by name? Of what nation, rank, profession, or occupation? Had they any commission — for what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any and what property, or concern, or authority, directly or indirectly, regarding the vessel and cargo? Were there any officers, soldiers, or mariners secreted on board, and for what reason were they secreted? Were any citizens of the United States on board, or secreted or confined at the time of the capture? How long, and why? Whether any persons on board the said vessel, at the time of her capture, were citizens or residents of any State or Territory of the United States then in a state of war or rebellion against the United States, its government and laws? If so, who by name, and of what State or Territory? What was their employment on board the vessel, and what their destination?

35. Were and are all the passports, sea-briefs, charter-parties, bills of sale, invoices, and papers which were found on board, entirely true, and fair, or are any of them false or colorable? Do you know of any matter or circumstance to affect their credit? By whom were the passports or sea-briefs obtained, and from whom? Were they obtained for this vessel only, and upon the oath or affirmation of the persons therein described, or were they delivered to or on behalf of the person or persons who appear to have been sworn or to have affirmed thereto without their having ever, in fact, made any such oath or affirmation? How long a time were they to last? Was any duty or fee payable and paid for the same, and is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often, and has the duty or fee been paid for such renewal? Was the vessel in a port in the country where the passports and sea-briefs were granted; and

if not, where was the vessel at the time? Had any person on board any passport, license, or letters of safe conduct? If yea, from whom, and for what business? If it should appear that there are in the United States, or in any other place or country besides the United States, any bills of lading, invoices, instruments, or papers relative to the vessel and goods concerning which you are now examined, state how they were brought into such place or country. In whose possession are they, and do they differ from any of the papers on board, or in the United States, or elsewhere, and in what particular do they differ? Have you written or signed any letters or papers concerning the vessel and her cargo? What was their purport? To whom were they written and sent, and what has become of them?

36. Towards what port or place was the vessel steering her course at the time of her being first pursued and taken? Was her course altered upon the appearance of the vessel by which she was taken? Was her course at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship papers? Was the vessel, before or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship papers? At what distance was she therefrom? Was her course altered at any, and what time, and to what other port or place, and for what reason?

37. By whom and to whom hath the said vessel been sold or transferred, and how often? At what time and at what place, and for what sum or consideration, has the same been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent, or what security or securities have been given for the payment of the same; and by whom, and where do they now live? Do you know, or believe in your conscience, such sale or transfer has been truly made, and not for the purpose of covering or concealing the real property? Do you verily believe that if the vessel should be restored, she will belong to the persons now asserted to be the owners, and to none others?

38. What guns were mounted on board the vessel, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other guns, weapons, warlike arms, or armament of any name or description, and if any, what? Were there any parts of warlike arms, not put together or finished, or any ammunition, fixed or unfixed, or any balls, shells, rockets, hand-grenades, flints, percussion caps, or any other thing known to be intended for military equipment? Were there any belts, ball-moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing or accoutrements, or any parts of them, or any sort of warlike or naval stores? Were any of such warlike or naval stores, or things, thrown overboard to

prevent suspicion at the time of the capture; and were any such warlike stores, before described, concealed on board under the name of merchandise, or any other colorable appellation, in the ship papers? If so, what are the marks on the casks, bales, and packages in which they were concealed? Are any of the before-named articles, and which, for the sole use of any fortress or garrison in the port or place to which such vessel was destined? Do you know, or have you heard of any ordinance, placard, or law, existing in such country or state forbidding the exportation of the same by private persons without license? Were such warlike or naval stores put on board by any public authority? When and where were they put on board?

39. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the vessel and cargo concerning which you are now examined, at the time of the capture?

40. Did the said vessel, on the voyage in which she was captured, or on or during any or what former voyage or voyages, sail under the convoy of any ship or ships of war, or other armed vessel or vessels? For what reason or purpose did she sail under such convoy? Of what force was or were such convoying ship or ships, and to what state or country did the same belong? What instructions or directions had you or did you receive on each and every of such voyages, when under convoy, respecting your sailing or keeping in company with such armed or convoying ship or ships; and from whom did you receive such instructions or directions? Had you any, and what directions or instructions, and from whom, for resisting, or endeavoring to avoid or escape from capture, or for destroying, concealing, or refusing to deliver up your vessel's documents and papers; or any, and what other papers, that might be or were put on board your said ship? If so, state the tenor of such instructions and all particulars relating thereto. Are you in possession of such instructions, or copies thereof? If so, leave them with the commissioner, to be annexed to your deposition.

41. Did the said vessel, during the voyage in which she was captured, or on making any and what former voyage or voyages, sail to, or attempt to enter, any port under blockade by the arms or forces of any, and what belligerent power? If so, when did you first learn or hear of such port being so blockaded, and were you at any, and what time, and by whom warned not to proceed to, or to attempt to enter into, or to escape from, such blockaded port? What conversation or other communication passed thereon? And what course did you pursue upon and after being so warned off?

42. Whether or no the vessel, concerning which you are examined,

did sail on her last voyage prior to her seizure, carrying a commission or license as a privateer, or letter of marque and reprisal, or other authority from any person or persons, to cruise against the persons or property of citizens of the United States, and to make prizes thereof. By whom was such authority, license, or direction given, and when? Was it in writing? If so, did it remain with the vessel up to the time of her capture, or was it destroyed or concealed previous thereto? When, and by whom? What were the contents or purport thereof? State all the facts in your knowledge within this inquiry, and the sources of your knowledge. Also state fully all the acts known to you to have been done by the vessel, her master or crew, under such commission or license, up to the period of her capture.

43. Whether or no the said vessel inquired about, at any time, and when and where, sailed or acted in company or concert with any other armed vessel or vessels, and what, in cruising against, pursuing, or seizing as prize, any persons, vessels, or property of citizens of the United States? Declare fully and particularly your knowledge, information, and belief therein.

*Form of Oath to be administered to each Witness.*¹

You shall true answer make to all such questions as shall be asked of you on these interrogatories; and therein you shall speak the truth, the whole truth, and nothing but the truth. *So help you God!*

¹ This form is found in the appendix to 2 Wheaton's Reports.

JURISDICTION.

Suits on Debentures.

Tenth. Of all suits by the assignee of any debenture for drawback of duties, issued under any law for the collection of duties against the person to whom such debenture was originally granted, or against any indorser thereof, to recover the amount of such debenture. [See s. 3039.]

2 Mar., 1799, c. 22, s. 80, v. 1, p. 687.

Suits on account of Injuries by Conspirators in certain Cases.

Eleventh. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States by any act done in furtherance of any conspiracy mentioned in section nineteen hundred and eighty-five, Title, "CIVIL RIGHTS." [See s. 1980.]

20 Apr., 1871, c. 22, s. 2, v. 17, p. 13.

*Suits to redress Deprivation of Rights secured by the Constitution and Laws to Persons within Jurisdiction of the United States.*¹

Twelfth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, ordinance, regulation, custom, or usage of any state, of any right, privilege, or immunity secured by the Constitution of the United States, or of any right secured by any law of the United States to persons within the United States, to persons within the jurisdiction thereof. [See ss. 1977, 1979.]

9 April, 1866, c. 31, s. 3, v. 14, p. 27.

31 May, 1870, c. 114, ss. 16, 18, v. 16, p. 144.

20 April, 1871, c. 22, s. 1, v. 17, p. 13.

Suits to recover Offices.

Thirteenth. Of all suits to recover possession of any office, except that of elector of President or Vice-President, representative or delegate in Congress, or member of a state legislature, authorized by law

¹ See sec. 3 of the Act of March 1, 1875. Supplement to Rev. Stat., p. 148.

to be brought, wherein it appears that the sole question touching the title to such office arises out of the denial of the right to vote to any citizen offering to vote, on account of race, color, or previous condition of servitude: *Provided*, That such jurisdiction shall extend only so far as to determine the rights of the parties to such office by reason of the denial of the right guaranteed by the Constitution of the United States, and secured by any law, to enforce the right of citizens of the United States to vote in all the states. [See s. 2010.]

31 May, 1870, c. 114, s. 23, v. 16, p. 146.

1 Mar., 1875, c. 114, s. 3. v. 18, p. 336.

Suits for Removal of Officers holding contrary to the Fourteenth Amendment.

Fourteenth. Of all proceeding by the writ of *quo warranto*, prosecuted by any district attorney, for the removal from office of any person holding office, except as a member of Congress, or of a state legislature, contrary to the provisions of the third section of the fourteenth article of amendment of the Constitution of the United States. [See s. 1786.]

31 May, 1870, c. 114, s. 14, v. 16, p. 143.

Suits by or against National Banks.

Fifteenth. Of all suits by or against any association established under any law providing for national banking associations within the district for which the court is held.

3 June, 1864, c. 106, s. 57, v. 13, p. 116.

1. (Jan., 1831.) The District Court of the United States for the state of Alabama has not jurisdiction of suits instituted by the Bank of the United States. This jurisdiction is not given in the act of Congress establishing that court, nor is it conferred by the act incorporating the Bank of the United States. *Bank of U. S. v. Martin*, 5 Pet. 479.

2. (March, 1874.) A national bank cannot be sued in the federal courts outside of the district where it is located. *Main, Assignee, &c. v. Second National Bank*, 6 Biss. 26.

3. *Manufacturers' National Bank v. Baack*, 8 Blatchf. 137, approved. *Id.*

4. The Practice Act of June 1, 1872, does not change this rule, nor enlarge the jurisdiction of the federal courts. *Id.*

Suits by Aliens for Torts in Violation of the Law of Nations, &c.

Sixteenth. Of all suits brought by any alien for a tort "only" in violation of the law of nations, or of a treaty of the United States.

24 Sept., 1789, c. 20, s. 9, v. 1, p. 76.

22 June, 1874, c. 391, s. 17, v. 18, p. 189.

19 Feb., 1875, c. 90, s. 7, v. 18, p. 331.

Suits against Consuls and Vice-consuls.

Seventeenth. Of all suits against consuls or vice-consuls, except for offenses above the description aforesaid.

24 Sept., 1789, c. 20, s. 9, v. 1, p. 76.

23 Aug. 1842, c. 188, v. 4, p. 517.

1. (April, 1838.) In the 2d section of the 3d article of the Constitution of the United States, it is declared, that, "in all cases affecting ambassadors, other public ministers, and *consuls*, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction:" *Held*, that this does not conflict with and render unconstitutional the act of Congress passed Sept. 24, 1789, sec. 9, giving jurisdiction to the District Court of the United States, in civil cases, against consuls and vice-consuls. *Gittings v. Crawford*, Taney's Dec. 1.

2. The grant of jurisdiction over a certain subject-matter to one court does not of itself imply that that jurisdiction is to be exclusive. *Ib.*

3. A consul is not entitled, by the laws of nations, to the immunities and privileges of an ambassador or public minister. He is liable to civil suits, like any other individual, in the tribunals of the country in which he resides. *Ib.*

4. (April, 1866.) The District Court has jurisdiction of a suit brought by an alien against the consul of his nation residing within the district, to recover the amount of official fees improperly exacted. *Lorway v. Lousada*, 1 Lowell, 77.

5. (March, 1868.) *Held*, that the courts of a state have no jurisdiction of suits against foreign consuls, but have jurisdiction of suits brought by them. *Sagory v. Wissman*, 2 Ben. 241.

Jurisdiction in Bankruptcy.

Eighteenth. The District Courts are constituted courts of bankruptcy, and shall have, in their respective districts, original jurisdiction in all matters and proceedings in bankruptcy.

2 Mar., 1867, c. 176, s. 1, v. 14, p. 517.

1. (Jan., 1844.) A bankrupt is bound to state, upon his schedule, the nature of a debt, if it be a fiduciary one. Should he omit to do so, he would be guilty of a fraud, and his discharge will not avail him; but if a creditor, in such case, proves his debt and receives a dividend from the estate, he is estopped from afterwards saying that his debt was not within the law. *Chapman v. Forsyth*, 2 How. 202.

2. But if the fiduciary creditor does not prove his debt, he may recover it afterwards, from the discharged bankrupt, by showing that it was within the exception of the act. *Ib.*

3. (Jan., 1845.) The District Court, when sitting in bankruptcy, has jurisdiction over liens and mortgages existing upon the property of a bankrupt, so as to inquire into their validity and extent, and grant the same relief which the state courts might or ought to grant. *Ex parte Christy*, 3 How. 292.

4. The control of the District Court over proceedings in the state courts, upon such liens, is exercised, not over the state courts themselves, but upon the parties, through an injunction or other appropriate proceeding in equity. *Ib.*

5. The design of the bankrupt act was to secure a prompt and effectual administration of the estate of all bankrupts, worked out by the courts of the United States, without the assistance of state tribunals. *Ib.*

6. In the case of a contested claim, the District Court has jurisdiction if resort be had to a formal bill in equity or other plenary proceeding; and also jurisdiction to proceed summarily. *Ib.*

7. (Jan., 1845.) The principles established in the case of *Ex parte the City Bank of New Orleans, in the matter of Christy, assignee of Walden*, renewed and confirmed. *Norton v. Boyd*, 3 How. 426.

8. But this court does not decide whether or not the jurisdiction of the District Court over all the property of a bankrupt, mortgaged or otherwise, is exclusive, so as to take away from the state courts in such cases. *Ib.*

9. (Jan., 1848.) The District Court of the United States, sitting in bankruptcy, had power to decree a sale of the mortgaged property of a bankrupt; and if there are more mortgages than one, and the proceeds of sale are insufficient to discharge the eldest mortgage, the purchaser will hold the property free and clear of all incumbrances arising from the junior mortgage. *Houston v. City Bank*, 6 How. 486.

10. (Dec., 1857.) The District Court, which passed the decree in bankruptcy, can take cognizance of such a case. (*Bill to annul or vacate a discharge for fraud.*) *Commercial Bank v. Buckner*, 20 How. 108.

11. (Dec., 1871.) Where an assignee in bankruptcy claims a fund as the property of his bankrupt, which, some time before the bankruptcy, a firm, of which the bankrupt was a member, transferred to a third party, and which the transferee now claims adversely to the assignee, the proceedings in the District Court should not be summary and under the first section of the Bankrupt Act, but formal, and under the second clause of the third section. *Smith v. Mason*, 14 Wall. 419.

12. (Dec., 1872.) The District Court sitting in bankruptcy has no jurisdiction to proceed by rule to take goods seized, before any act of bankruptcy by the lessees, for rent due by them, in Louisiana, under "a writ of provisional seizure," — and then in the hands of the sheriff, and held by him as a pledge for the payment of rent due, — out of his hands, and to deliver them to the assignee in bankruptcy, to be disposed of under the orders of the bankrupt court; neither the sheriff nor the lessor having been parties to the proceedings in bankruptcy, nor served with process to make them such. *Marshall v. Knox*, 16 Wall. 551.

13. (Oct., 1874.) When an assignee in bankruptcy voluntarily submits himself to the jurisdiction of a state court, and that court renders judgment against him, it is too late for him to allege that the federal courts alone have jurisdiction in bankruptcy. *Scott v. Kelley*, 22 Wall. 57.

14. (Oct., 1874.) A proceeding under the Bankrupt Act, in which, by petition in form, the assignee sets forth articulately, that A., B., C., &c., claim liens against the bankrupt's estate, the validity of each of which liens he, the assignee, denies, and in which he prays that the parties setting up the liens may be made parties, and be required to answer, each of them, all his charges

and allegations as made, and be compelled, each of them, to set forth and state in their respective answers, the particulars and facts upon which their respective claims are based, and that on final hearing, all questions and rights of each and all the parties may be ascertained and determined by the court, and that the petitioner be directed to sell the estate and distribute the proceeds; and in which the assignee prays that he "may have such other and further relief in the premises, and may be further directed in his duties as the nature of the case requires;" in which proceeding the parties asserting the liens answer in form, and the assignee replies in form, — is a "case in equity" within the 8th section of the Bankrupt Act, which gives an *appeal* to the Circuit Court in all cases in equity; and is not a case for the general superintendence and jurisdiction by that court, given in the 2d section of the act, in cases where no provision for the supervision of the Circuit Court is otherwise made. *Stickney v. Wilt*, 23 Wall. 150.

15. The fact that a subpoena is not prayed for does not change this view; the defendants voluntarily appearing. *Ib.*

16. If such a case be taken into the Circuit Court, under this general superintending jurisdiction given by the said 2d section, it is wrongly taken. No jurisdiction exists there so to review the case. And no appeal lies to this court from the action of the Circuit Court, made under such circumstances, to hear and determine the merits. *Ib.*

17. Where a case has been so taken, and the decision reversing the decree of the District Court is in favor of the party taking it, this court will reverse the judgment or decree of the court below, and remand the suit, with directions to dismiss it. *Ib.*

18. But in the present case, where, owing to the lapse of time, the party who had the decision of the Circuit Court (reversing that of the District Court) against him, would be prevented from having, as matter of right, a review of the case by the Circuit Court, on an appeal properly taken under the 8th section, this court thought it fitting to suggest that perhaps, on a proper application, the District Court would grant a review of the decree that it had rendered; which review, if granted, would lay the foundation, in case of an adverse decision, as before upon the merits, for an appeal in proper form to the Circuit Court. *Ib.*

19. (Oct., 1875.) The court pronouncing the decree of bank-

ruptcy had jurisdiction and authority to make the order [for payment to assignee of balance due on stock, and notice to stockholders by publication]; and it was not necessary that the stockholders should have received actual notice of the application therefor. In contemplation of law they were before the court in all the proceedings touching the corporation of which they were members. *Sanger v. Upton*, 1 Otto, 56.

20. It was competent for the court to order payment of the unpaid stock subscriptions, as the directors, under the instructions of a majority of the stockholders, might, before the decree in bankruptcy, have done. *Ib.*

21. (Oct., 1876.) Under the Bankrupt Act of March 2, 1867 (14 Stat. 517), the assignee might sue in the state courts to recover the assets of the bankrupt, no exclusive jurisdiction having been given to the courts of the United States. *Quære*, whether such exclusive jurisdiction is given by the Revised Statutes. *Claffin v. Houseman*, 3 Otto, 130.

22. (Oct., 1877.) Mortgagees who prove their debt in the bankruptcy proceedings against the mortgagor become creditors of his general estate only for the balance of the debt, after deducting the value of the mortgaged property, to be ascertained by agreement, sale, or in such other manner as the Bankrupt Court may direct. *McHenry v. La Société Française*, 5 Otto, 58.

23. Mortgagees may, pursuant to leave of that court, institute a suit against the bankrupt, in another court, for the foreclosure of his equity of redemption, and the sale of the mortgaged premises. *Ib.*

24. (Oct., 1877.) The court again decides that, where a corporation is adjudged a bankrupt, the proper District Court of the United States, in order to provide means for the payment of the debts of the corporation, may direct an assessment upon the unpaid balance due on stock held by the several stockholders. *Turnbull v. Payson*, 5 Otto, 418.

25. (April, 1842.) By the Bankrupt Law of 1841, the District Courts of the United States are possessed of the full jurisdiction of courts of equity, over all subject-matters arising in bankruptcy. *Ex parte Foster*, 2 Story, 131.

26. (Oct., 1843.) A petition for the benefit of the Bankrupt Act was filed in the District Court, on the 3d day of March, 1843, about noon. The act of the 3d of March, 1843, repealing

the Bankrupt Act passed Congress and was approved by the President late in the evening of the same day. *Held*, that the court had jurisdiction of the petition at the time when it was filed and acted upon; and that it had full jurisdiction to entertain all proceedings thereon, to the close thereof, according to the provisions of the Bankrupt Act. *In the Matter of Richardson*, 2 Story, 571.

27. (April, 1825.) The District Courts have not, like the Chancellor in England, exclusive jurisdiction over the entire execution of the Bankrupt Law. *Lucas v. Morris*, 1 Paine, 396.

28. They cannot remove the assignees, nor compel them to account. *Ib.*

29. (April, 1848.) Under sec. 6 of the Bankrupt Act of Aug. 19, 1841, (5 Stat. at Large, 445,) a District Court has jurisdiction of an action by an assignee in bankruptcy of a voluntary bankrupt, to recover a balance due from a principal to the bankrupt as factor at the time of the presentation of his petition in bankruptcy. *Kelly v. Smith*, 1 Blatchf. 290.

30. Such a suit is essential to the winding up of the proceedings in bankruptcy; and jurisdiction in it depends upon the subject-matter, and not upon the parties. *Ib.*

31. (July, 1869.) K. was adjudged a bankrupt. G., at the time, held a mortgage on some of K.'s property. Afterward G. commenced a suit in the state court for the foreclosure of the mortgage, making J., the assignee in bankruptcy of K., a defendant. J., on a petition to the District Court, alleging the invalidity of the mortgage, and praying that it might be decreed to be void, and that the mortgaged premises might be sold, and the proceeds be brought into court, and that further proceedings in the foreclosure suit might be enjoined, obtained such injunction, and an order requiring G. to answer the petition: *Held*, that the District Court had jurisdiction in the case, under sec. 1 of the Bankruptcy Act of March 2, 1867 (14 Stat. at Large, 517). *Matter of Kerosene Oil Co.*, 6 Blatchf. 521.

32. (Sept., 1869.) Where property that was in possession of a bankrupt when he filed his voluntary petition, and was embraced in the inventory to such petition, as property assignable under the act, was afterwards taken by process in replevin issued from a state court, by a creditor who had sold it to the bankrupt, but claimed that, because of fraud, the title to it had not passed,

the process stating that the bankrupt claimed to have purchased the property, and the bankrupt was adjudged such, and an assignee was appointed,— *Held*, in a proceeding instituted by the assignee against the creditor, that the creditor must restore the property or its value to the assignee, and that the proper remedy of the creditor was to apply to the District Court for relief, or to institute a proper action against the assignee in the District Court or in this court. *In re Vogel*, 7 Blatchf. 18.

33. (June, 1870.) The District Court, on the trial, before a jury as to the fact of bankruptcy, in an involuntary proceeding under sec. 39 of the Bankrupt Act of March 2, 1867 (14 Stat. at Large, 536), has power to permit an amendment of the creditor's petition. *In re Bininger*, 7 Blatchf. 262.

34. (Sept., 1871.) The Boston, Hartford, and Erie Railroad Company was a corporation chartered by the state of Connecticut. It afterwards received a grant of corporate privileges, and was declared a corporation, by an act of the legislature of the state of Massachusetts, in which state it had an office, and carried on business. In October, 1870, a petition was filed by A., in the District Court for Massachusetts, in bankruptcy, upon which the corporation was, on the 2d of March, 1871, adjudged bankrupt. In December, 1870, J. filed a petition in the District Court for Connecticut, praying that the corporation be adjudged a bankrupt by that court. Pending this latter petition A. petitioned the District Court for Connecticut, and set forth in his petition, and in a supplemental petition, his proceedings in Massachusetts, and the adjudication there made, averring, also, that the proceedings in Connecticut were collusive between the corporation and J., and would prejudice the creditors of the corporation, create expense and conflict, and embarrass the settlement of the estate, and praying that he, A., might be allowed to appear and defend against the petition of J. The District Court for Connecticut dismissed such petition of A., and proceeded to an adjudication of bankruptcy against the corporation, and issued a warrant: *Held*,

(1.) That A. being, in fact, a creditor of the corporation, his petition to the District Court for Connecticut should have been entertained, and that the facts set forth therein warranted his intervention.

(2.) That, whether the bankrupt was to be regarded as a single corporation, or as two corporations, united in interest,

having one and the same corporators, and common property, rights, and franchises, and owing the same creditors, the District Court of Massachusetts should be permitted to exercise the jurisdiction it had acquired over the bankrupt and the estate, and carry the proceedings in bankruptcy to their final conclusion, without the interference of the District Court for Connecticut, and that all proceedings in that court should be stayed. *In re The Boston, Hartford, and Erie Railroad Co.*, 9 Blatchf. 101.

35. (Jan., 1872.) The District Court has power to restrain the holder of a mortgage, or other lien, on the property of a bankrupt, from enforcing such lien by suit; and, where the value of the property exceeds the amount secured by the lien, or the amount or validity of the lien is in doubt, it is, in general, proper to do so. *In re Iron Mountain Co.*, 9 Blatchf. 321.

36. (Jan., 1872.) The District Court has, under sec. 1 of the Bankrupt Act of March 2, 1867 (14 Stat. at Large, 517,) power to prohibit any proceeding in a state court by a creditor, to liquidate and enforce a lien on the property of a debtor who is adjudged a bankrupt by such court. *In re Clark*, 9 Blatchf. 372.

37. Such power is to be exercised summarily, and does not require a formal suit. *Ib.*

38. When the property affected by a lien is confessedly the property of the bankrupt, and has passed to the assignee, and it only remains to ascertain and liquidate the alleged lien, the summary jurisdiction of the District Court is entirely adequate. *Ib.*

39. The power of the bankruptcy court to give further relief, in protection of the estate of the bankrupt, on a renewed application, on new or further evidence, after it has made one order in the premises, considered and sustained. *Ib.*

40. An order of the District Court, restraining an alleged creditor of the bankrupt from further prosecuting an action in a state court, in which he had attached property of the bankrupt, affirmed. *Ib.*

41. (Jan., 1872.) Where property comes to the possession of an assignee in bankruptcy, as part of the estate of the bankrupt, and is taken from his possession under a writ of replevin issued from a state court, in a proceeding to which the assignee is not a party, and in which the title of the assignee is not in question, the District Court is bound to see that such possession by the assignee is not forcibly displaced. *In re Clark*, 9 Blatchf. 379.

42. (Feb., 1872.) A proceeding in involuntary bankruptcy, under sec. 39 of the Bankrupt Act of March 2, 1867 (14 Stat. at Large, 536), may be prosecuted in the district in which the debtor has carried on business for the requisite time specified in sec. 11 of that act, although he resides and may be found in another district. *In re A. & C. Railroad Co.*, 9 Blatchf. 390.

43. A railroad company, incorporated by the laws of a state, for constructing and operating a railroad, cannot be proceeded against, in bankruptcy, in a District Court, without the state or states where its railroad is, or is to be, built, maintained, and operated, on the petition of a creditor, charging an act of bankruptcy. *Ib.*

44. Allegation and proof that such company kept an office in such district for six months next preceding the filing of the petition where its officers acted and its board of directors met, and where it contracted debts and made loans, purchases, and payments, do not give such court jurisdiction. *Ib.*

45. The business of a railroad company, within the meaning of the 11th section of the said act, can only be carried on where the railroad is or is to be constructed, maintained, and operated. *Ib.*

46. Hence, the District Court for the Southern District of New York has no jurisdiction to adjudge an Alabama railroad corporation a bankrupt on the petition of a creditor. *Ib.*

47. (Feb., 1872.) The principle decided in *In re The Boston, Hartford, & Erie Railroad Co.* (*ante*, p. 101), affirmed. *In re Boston, Hartford, & Erie Railroad Co.*, 9 Blatchf. 409.

48. Under the Bankrupt Act of March 2, 1867 (14 Stat. at Large, 517), where petitions for adjudication are filed in two or more District Courts, each having jurisdiction, the court in which the petition is first filed ought to be accorded exclusive jurisdiction over the case. *Ib.*

49. An adjudication in bankruptcy was signed by the district judge in New York on March 1, but was not made known, or promulgated, or filed, until March 3. On March 2 the District Court for Massachusetts made a decree adjudging the same debtor a bankrupt. *Held*, that the adjudication in Massachusetts was the prior adjudication. *Ib.*

50. (May, 1872.) A banking corporation being insolvent, a receiver of its property was appointed by a state court, on the 13th of October. On that day its cashier gave up to the receiver

the keys of the bank, and became his clerk, on a salary, and from that time ceased to act as cashier, but was never displaced from his official relation to the corporation as cashier. On a petition in involuntary bankruptcy, filed on the 23d of December against the corporation, in the District Court, alleging the appointment of such receiver as an act of bankruptcy, an order to show cause was served on such cashier, on the 28th of December. On the 29th of December a judgment was entered in a state court, dissolving the corporation. On the 6th of January the corporation was adjudged bankrupt. *Held*, that the service of the order to show cause was sufficient to give the District Court jurisdiction to make the adjudication. *Platt v. Archer*, 9 Blatchf. 559.

51. *Held*, also, that the District Court had jurisdiction to make the adjudication, notwithstanding the dissolution of the corporation. *Ib.*

52. A corporation, subject to the provisions of the Bankrupt Act, and which has committed an act of bankruptcy, and is in existence when the petition against it is filed, and when the proper papers are served on its proper officer cannot oust the jurisdiction of the bankruptcy court to proceed, on the return day, to an adjudication, because a decree dissolving the corporation has been made after such service and before such return day. *Ib.*

53. (Feb., 1874.) The summary jurisdiction of the bankruptcy court over the person of the bankrupt ceases on the granting of his discharge from his debts. *In re Dole*, 11 Blatchf. 499.

54. After such discharge, he cannot, by summary order, be required to submit to examination touching his property alleged to have been concealed or fraudulently transferred. *Ib.*

55. For the recovery of such property a plenary suit is necessary, in which, if the bankrupt be required to make discovery, or be examined as a witness, he will be entitled to the benefits and the protection belonging to a party or witness in like cases. *Ib.*

56. (Dec., 1880.) There is nothing in the bankruptcy statute which requires that a voluntary petition shall be signed or verified by a debtor in person in order to give the court jurisdiction of the proceeding. *Wald v. Wehl*, 18 Blatchf. 495.

57. A voluntary petition in bankruptcy purported to be the petition of A. and G., partners as N. & Co. It was signed and verified by A. for himself and as agent for G., and was not otherwise signed or verified by G. *Held*, that the bankruptcy

court acquired jurisdiction of the case not only as to A. but as to G. and the firm. *Ib.*

58. The question as to the existence of the agency of A. for G., and as to the sufficiency of the petition and oaths in form, cannot be inquired into in a suit brought by the assignee in bankruptcy of A. and G. and of the firm, to recover assets of the estate, if the bankruptcy court had jurisdiction of the case, and if there was enough in the petition and the oaths to authorize that court to exercise its judgment on said questions. *Ib.*

59. (March, 1881.) The District Court has power, sitting in bankruptcy, and exercising the jurisdiction conferred by the bankrupt law of 1841, by summary order, to set aside and order to be surrendered and canceled deeds given by the official assignee, which were improvidently, irregularly, or without due authority, executed by him, or which were procured to be executed by imposition and fraudulent practices upon the court, or which were designedly so drawn as to be grants in excess of, or varying in material particulars from, the orders of the court under which they purport to be executed, while the same are still in the hands of the party by whom they were so procured from the assignee, and who had notice of said irregularities and defects, and who gave no value therefor except certain sums paid to the official assignee as fees, upon the petition of a party not a creditor of the bankrupt, and having no interest in the matter except that he is in the possession of land claiming title thereto, and that he has been subjected to litigation, or is threatened with litigation, in respect to said land, based upon the deeds sought to be avoided. *In re Hyde*, 19 Blatchf. 115.

60. Such power can be exercised after the discharge of the bankrupt, and when there are no longer any known assets to be distributed among creditors. *Ib.*

61. (Jan., 1877.) The United States District Court, as a court of equity, having cognizance of all cases and controversies between a bankrupt and his creditors, has the same power to restrain creditors in judgments at law against a bankrupt that a state court of equity would have over such creditors if the debtor were not a bankrupt. *Fowler v. Dillon*, 1 Hughes, 232.

62. The power to reduce the amount of judgments at law rendered on Confederate contracts, to the equivalent in legal money, is an equitable power belonging to state courts of equity, and may

be exercised in cases where bankrupts are parties defendant, by the United States District Courts sitting as courts of equity. *Id.*

63. (Oct., 1873.) The jurisdiction of the United States court in bankruptcy is an exclusive jurisdiction. *Watson v. Citizens' Savings Bank*, 2 Hughes, 200.

64. (June, 1875.) Where not only a vendor's lien upon real estate which had been purchased by the bankrupt was unsatisfied, but liens were claimed which had attached upon the property before it came to the vendor of the bankrupt, — *Held*, that the title to the property and the rights of parties cannot be adjudicated in the proceeding in bankruptcy, but resort must be had to a plenary proceeding in equity, either in the District or Circuit Court, especially if the value in controversy be large enough to give the right of appeal to the Supreme Court of the United States. *Ex parte Drewry*, 2 Hughes, 435.

65. (Sept., 1872.) The paramount duty of the Court of Bankruptcy to provide for the liquidation of liens, forbids it to turn over the subject to another tribunal for litigation and adjustment, but requires it to abstract from the homestead provision the amount of liens rightfully attaching thereto. *In re Wyllie*, 2 Hughes, 449.

66. (April, 1874.) The bankruptcy court has exclusive jurisdiction to liquidate the liens upon a bankrupt's real estate, but whether it will exercise this jurisdiction in any case is a matter for its own discretion, and this discretion must be exercised by the court itself, and cannot be delegated to or assumed by the register. *In re Addison*, 3 Hughes, 430.

67. (Oct., 1879.) The bankrupt court has summary jurisdiction over all contracts made with itself respecting the bankrupt's property ; and where, on the release of goods under seizure, bond is given for their forthcoming or their value, the District Court may, on petition or motion upon notice, order the goods or the value thereof to be brought into court by parties to the bond. *Rosenbaum v. Garnett*, 3 Hughes, 662.

68. (May, 1873.) A receiver in possession of mortgaged premises under order of a state court of chancery, in proceedings for foreclosure, prior to commencement of proceedings in bankruptcy, cannot be dispossessed by order of the District Court in the bankruptcy proceedings. *Davis v. Railroad Co.*, 1 Woods, 661.

69. (April, 1875.) The bankrupt court, in a proceeding by two partners in a firm of three, to have the partnership adjudicated bankrupt, has jurisdiction over the partnership property, although the third partner, in a proceeding in a state court to settle the partnership and to obtain a decree for the amount due him from his copartners, has had himself appointed receiver, and is in possession of the partnership assets. *In re Hathorn & Batchelor*, 2 Woods, 73.

70. In such a case, the bankrupt court may enjoin such third partner from disposing of the assets of the partnership, or from any interference with them until the question, whether or not the firm is bankrupt, can be tried. *Ib.*

71. (April, 1876.) A court of bankruptcy has all the powers of a court of chancery, and proceeds summarily, untrammelled by the ordinary rules of procedure. A court of chancery may refer a matter for inquiry as to the facts, at any stage of the cause, even on final hearing. *In re Walshe*, 2 Woods, 225.

72. (April, 1877.) The homestead secured to the head of a family by the state law is excepted by sec. 14 of the Bankrupt Act (Revised Statutes, sec. 5045) from the operation of the conveyances made to the assignee, and is not subject to the jurisdiction of the bankrupt court, but must be pursued by those having claims against it, in the proper state tribunals. *In re Bass*, 3 Woods, 382.

73. The fact that the bankrupt has, in a particular case, waived his right to the exemption, or that the homestead was not ascertained and set out in severalty before the proceedings in bankruptcy were begun, does not change the rule. *Ib.*

74. (April, 1869.) The District Court will not take jurisdiction in bankruptcy on the petition of an only creditor, whose debt is secured on real estate. *In re Johann*, 2 Biss. 139.

75. (Dec., 1871.) A fire insurance company is clearly within the scope and provisions of the bankrupt law. *In re Merchants' Insurance Co.*, 3 Biss. 162.

76. Though the proceedings in the state court may have been within its powers and jurisdiction, yet, when the fact of bankruptcy intervenes, the exclusive jurisdiction of this court attaches. *Ib.*

77. (March, 1871.) The District Court has no jurisdiction of an involuntary case in bankruptcy, unless it appears on the trial

that the debtor, at that time, owes debts provable under the act, exceeding the sum of three hundred dollars, and is indebted to the petitioning creditors in the amount of two hundred and fifty dollars. This is true even though the debtor, at the time of the filing of the petition, was indebted to exceed those sums. When his indebtedness, by subsequent payments, is reduced below those sums, the court loses jurisdiction. *In re Skelley*, 3 Biss. 260.

78. (April, 1873.) The bankrupt court has jurisdiction of a petition by one partner to have the firm declared bankrupts, even though proceedings are pending in a state court to wind up the partnership, and a receiver had been appointed, who had taken possession of the assets. *In re Noonan*, 3 Biss. 491.

79. Such a petition being voluntary as to him, it is not necessary that there should be an act of bankruptcy alleged. *Ib.*

80. A dissolution by the act of all or any of the partners does not put an end to the power of the bankrupt court. *Ib.*

81. So long as any unfinished business, debts, credits, or assets remain, the bankrupt court has jurisdiction, a proper case being made. *Ib.*

82. (April, 1874.) The amendment of Feb. 3, 1873, to the Bankrupt Act, does not deprive the bankruptcy courts of jurisdiction over a corporation of which a receiver has been appointed by a state court. *In re National Life Ins. Co.*, 6 Biss. 35.

83. This amendment does not oust the federal courts of jurisdiction, but simply saves the acts done by the state court and receiver prior to the filing of the petition. *Ib.*

84. (Nov., 1874.) A statement in the declaration filed in the state court, of facts which would, if true, prevent the discharge of the debt in bankruptcy, is not binding upon the bankrupt court, nor does it prevent the full jurisdiction of that court over the person and estate of the bankrupt. *In re Williams & McPheeters*, 6 Biss. 233.

85. (Oct., 1875.) The lien of an execution will be respected by the bankruptcy court, though the plaintiff sued out his execution immediately upon the rendering of the judgment, and the defendant filed his petition in bankruptcy on the same day. *Witt, Assignee v. Hereth*, 6 Biss. 474.

86. (Dec., 1875.) A suit in equity to set aside a contract upon grounds created and established by the bankrupt law is

one over which the federal courts have jurisdiction, and these courts will entertain jurisdiction to prevent their officers being placed in unreasonable jeopardy. *Main v. Glen*, 7 Biss. 86.

87. (1879.) Where the record of the bankruptcy court on its face shows that the court had jurisdiction to pass a decree adjudicating the debtor to be a bankrupt, and that such decree was passed, it is conclusive as to the jurisdiction of the bankruptcy court, unless assailed in a direct proceeding to set aside or annul the same. *In re Ives & Porter*, 5 Dill. 146.

88. (July, 1870.) Where a petition had been filed against certain parties, praying that they be adjudged bankrupts, and on the return day they appeared, and with their own consent were so adjudged, and subsequently another creditor moved the court to dismiss the proceeding, on the ground that the bankrupts had never resided or carried on business in this state: *Held*, that the court was without jurisdiction, and that the proceedings should be vacated and set aside. *Fogarty v. Gerrity*, 1 Sawyer, 233.

89. (August, 1870.) The District Court has jurisdiction to ascertain and liquidate all liens upon the bankrupt's property, and in the exercise of this jurisdiction may enjoin a creditor from enforcing a judgment in a state court against the property of the bankrupt; but after the process of the state court has been executed by a sale of property, the District Court will not interfere. *In re Fuller*, 1 Sawyer, 243.

90. (Aug., 1870.) The ordinary tribunals are not deprived, by mere force of an adjudication in bankruptcy, of jurisdiction over suits against the bankrupt. The proceedings in such suits may be arrested or controlled by the bankruptcy court, when necessary for the purposes of justice; but in the absence of such interference, the jurisdiction of the ordinary tribunals remains unimpaired, and their judgments are valid. *In re Davis*, 1 Sawyer, 260.

91. (Nov., 1872.) The concurrent jurisdiction conferred upon the Circuit Court, by sec. 2 of the Bankrupt Act, is limited to cases where there is a controversy concerning the right to, or some interest in, some specific thing, between the assignee and a third person, and does not include an action to collect a simple debt. *Bachman v. Packard*, 2 Sawyer, 264.

92. The District Courts have original jurisdiction of all cases

and controversies between third persons and the assignee in bankruptcy as such. *Ib.*

93. (May, 1873.) This court has jurisdiction to allow or disallow claims against a bankrupt's estate, and therefore to pass upon their legality; and this, although it may not have jurisdiction to enforce a penalty imposed by the state law, on account of an act making any such claim illegal. *In re Pittock*, 2 Sawyer, 417.

94. (Oct., 1878.) The District Court has no jurisdiction, on a petition accompanied by affidavits, to restrain the enforcement of a judgment rendered by a court of competent jurisdiction against a bankrupt on the ground that it was obtained by collusion and fraud; nor has it authority on such petition to set aside that judgment, and to inquire and determine what sum, if any, is in fact due from the bankrupt. *In re Lodi Land & Lumber Co.*, 5 Sawyer, 286.

95. (Dec., 1880.) While an assignee who has been appointed by a court of bankruptcy of another district may sue in this court to recover assets from a stranger, such action must be by a plenary suit; and there is nothing in the Bankrupt Act which takes such a suit out of the provisions of sec. 739 of the Revised Statutes, although the defendant may have property in this district which is claimed to be assets; and the defendant must be an inhabitant of, or be found within, this district at the time of serving the writ, to give this court jurisdiction. *Shainwald v. Lewis*, 6 Sawyer, 585.

96. (Oct., 1847.) The District Court has, under the bankrupt law, exclusive jurisdiction of all controversies between the assignee and the bankrupt, arising out of his bankruptcy, and depending on his quality or *status*, and involving his rights and immunities as a bankrupt. *Carr v. Gale*, 2 Ware, 330.

97. But when the bankrupt has possession of property claimed by the assignee as part of the assets of the bankruptcy, and the bankrupt claims to hold them, not as a bankrupt, but under an independent title as the agent of a third person, he is simply a person claiming an adverse interest, and the Circuit Court has jurisdiction. *Ib.*

98. (March, 1869.) The Circuit and District Courts of the United States have jurisdiction of a bill by an assignee in bankruptcy, to redeem a chattel mortgage made in Massachusetts. *Foster et al. v. Ames*, 1 Lowell, 313.

99. The District Court has power to order chattels in the possession of the assignee, and on which there is a mortgage, to be sold free of the incumbrance, and the mortgagee's lien is then transferred to the proceeds of sale. *Ib.*

100. This power depends upon the true construction of the first section of the Bankrupt Act, and may be exercised notwithstanding the mortgagee has by his contract a right of immediate possession of the goods, and desires to avail himself of that right. *Ib.*

101. Such an order ought not to be passed when a mortgagee, whose title is admitted to be valid, would be injuriously affected, as where there is clearly no market value for the property, or not more than the amount of the mortgage. *Ib.*

102. The bankrupt court may in some cases order the assignee to expend money in finishing goods for sale, when it is clearly shown that a benefit must result to the estate, and that the work can be done within a reasonable time. *Ib.*

103. (1870.) An alien residing in the United States may be adjudged a bankrupt on his own petition. *Re Goodfellow*, 1 Lowell, 510.

104. Such an alien, owing debts here, may petition as soon as his residence is acquired. *Ib.*

105. (April, 1871.) The District Courts of the United States, in a district other than that in which the proceedings in bankruptcy are pending, have no jurisdiction of suits by the assignees against debtors of the bankrupt, by virtue of any provision of the bankrupt law. *Shearman v. Bingham*, 1 Lowell, 575.

106. (Dec., 1871.) An assignee in bankruptcy succeeds to the rights of creditors, and may maintain a suit to set aside a deed for fraud, actual or constructive, though the fraud be not one mentioned in sec. 35 of the Bankrupt Act. *Pratt v. Curtis*, 2 Lowell; 87.

107. The courts of the United States have jurisdiction in equity to set aside such a deed, though there may be concurrent jurisdiction at law, the remedy at law not being considered in all cases adequate and complete. *Ib.*

108. An assignee in bankruptcy is the proper party plaintiff to impeach a deed given by the bankrupt, though only one class of creditors is interested to set it aside. *Ib.*

109. (Jan., 1872.) A decree of a state court, enjoining a cor-

poration from further prosecuting its business, on the ground of insolvency, and appointing receivers, does not oust the jurisdiction of the District Court to adjudge the corporation bankrupt. *Re The Independent Ins. Co.*, 2 Lowell, 97.

110. (Feb., 1875.) The allegation in a creditor's petition for adjudication of bankruptcy, that the petitioners constitute the requisite amount and number of all the creditors, is not the allegation of a jurisdictional fact. *Ex parte Jewett*; *Re Morris*, 2 Lowell, 393.

111. Such an allegation may be amended after a meeting for composition has been held, and when the question of the acceptance of the resolution is before the court. *Ib.*

112. (1844.) A statute which takes effect from and after its passage goes into operation the day on which it is approved, and has relation to the first moment of that day.

The statute repealing the Bankrupt Act was approved March 3, 1843; and a petition to be declared a bankrupt, filed on that day, was dismissed, as being too late. *In the Matter of Welman*, 20 Vt. 653.

113. (1843.) The statute repealing the Bankrupt Act took effect the day it was approved, which was March 3, 1843; and, as there can be no fractions of a day in a question of this nature, it must be considered as being in force from the first moment of that day. The presenting and filing of the petition is deemed to be the commencement of a proceeding in bankruptcy; and where the petition was presented March 3, 1843, it was *held* that no order could be taken upon it, other than to dismiss it. *In the Matter of Howes*, 21 Vt. 619.

114. (Oct., 1848.) Whenever a judgment is recovered for a debt or claim due to a bankrupt and belonging to his assignee, whether by the bankrupt himself or by a third person in his right, the assignee is entitled to the money recovered by such judgment; and if the judgment has not been paid, a court of equity may arrest the payment of it to the bankrupt or to the one who sues in his right, and order the money paid to the assignee. *Moore v. Jones*, 23 Vt. 739.

115. And if the bankrupt, after the decree in bankruptcy, has brought such action in his own name in the state court and obtained a judgment, without his bankruptcy being pleaded by the defendant in bar of the recovery, the District Court of the

United States has power, upon petition brought by the assignee while the judgment remains unpaid, to so far interfere with the judgment as to order the amount paid to the assignee. *Ib.*

116. And it is no objection to this power being exercised by the District Court within one district, that the decree of bankruptcy and the proceedings under it were had in the District Court within another district. *Ib.*

117. (March, 1868.) The District Court has jurisdiction, under the first section of the Bankrupt Act, to enforce the protection spoken of in the fourth section of the act. *Matter of Glaser*, 2 Ben. 180.

118. (May, 1868.) A creditor who has proved his debt is subject to the jurisdiction of the bankruptcy court without regard to his place of residence. *Matter of Kyler*, 2 Ben. 414.

119. (Nov., 1868.) A bankruptcy court has jurisdiction to restrain parties who are proceeding in a state court, by action commenced after an adjudication in bankruptcy, to enforce a mortgage upon property in the possession of the assignee in bankruptcy, which mortgage the assignee claims is void. *Matter of the Kerosene Oil Co.*, 3 Ben. 35.

120. (Jan., 1871.) A petition in involuntary bankruptcy was filed on Jan. 21, 1868, and an adjudication was made on Feb. 1, on default of the debtor to appear, after personal service. The petition stated that the debtor had resided in this district for six months next preceding the filing of the petition; but the testimony showed that, from May 1, 1867, to Dec. 7, 1867, he resided in Boston, and that from that time till the filing of the petition he resided in New York, and did not carry on business anywhere during the six months. The debtor applied for a discharge. *Held*, that the court had no jurisdiction over the case, because the debtor had not resided in the district for the longest period during the six months preceding the filing of the petition. *Matter of Leighton*, 4 Ben. 457.

121. (March, 1872.) The firm of F. & Co., composed of F., L., and G., did business in New Orleans, La., and expired by limitation in September, 1862. In August, 1867, G., then residing in the city of New York, filed his petition to be declared a bankrupt. He was declared a bankrupt, and an assignee was appointed. G. afterwards obtained his discharge. In February,

1868, F. and L., then residing in New Orleans, filed their petition there, praying that all the members of the firm of F. & Co. might be declared bankrupts. An assignee was elected in those proceedings, and he afterwards sold a piece of land in Texas to one B. B., not being satisfied with the title, applied to this court in order to have the assignee appointed in these proceedings join in the conveyance. *Held*, that the proceedings in Louisiana were void for want of jurisdiction; that it was the duty of the assignee in these proceedings to have F. and L. adjudged bankrupt by supplemental proceedings in this court; and that in neither of the proceedings, as they now stood, could the title of the members of F. & Co. to the real estate in question be conveyed. *Matter of Greenfield*, 5 Ben. 552.

122. (Feb., 1873.) A District Court has jurisdiction to declare bankrupt a corporation which has been dissolved by a state court, but the proceeding must be commenced within six months after the corporation has been dissolved. *Matter of the New Amsterdam Fire Ins. Co.*, 6 Ben. 368.

123. (Nov., 1875.) That a petition in involuntary bankruptcy is irregularly verified is a question of practice, and not of jurisdiction. *Matter of Getchell*, 8 Ben. 256.

124. (Feb., 1876.) The requirement of the statute, that a petition in involuntary bankruptcy shall be the petition of one fourth in number and one third in amount of the creditors, is not a jurisdictional point, in such wise that, where there is a proper allegation in the petition, as to the number and amount of creditors and a judgment of the court that such allegation is true, such fact can be re-examined, either by the court which rendered such judgment, or in a collateral proceeding, unless fraud is alleged. *Matter of Duncan*, 8 Ben. 365.

125. (Dec., 1877.) A receiver of a mutual life insurance company, a corporation, was appointed by a state court. Afterwards, on a petition in bankruptcy, filed in the name of the corporation, it was adjudged a bankrupt by this court. The holders of policies issued by the corporation were, by its charter, entitled to vote for trustees of it, and to share in its profits. The policy-holders were not notified of the meeting called for the purpose of authorizing the proceedings in bankruptcy. *Held*:

(1.) That the receiver had a sufficient standing to move the bankruptcy court to set aside the proceedings in bankruptcy;

(2.) That he could not be allowed to show that the corporation was not insolvent;

(3.) That the policy-holders were corporators within the meaning of sec. 5122 of the Revised Statutes, and that, as they were not notified of the meeting, the court had no jurisdiction to entertain the proceedings in bankruptcy, and they must be set aside. *Matter of the Atlantic Mut. Life Ins. Co.*, 9 Ben. 270.

126. (Feb. 1878.) Equally, under sec. 5014 of the Revised Statutes in regard to voluntary bankruptcy, and under sec. 5021, in regard to involuntary bankruptcy, a debtor must reside within the jurisdiction of the United States when the petition in bankruptcy is filed, in order to give the court jurisdiction to adjudge him a bankrupt. *Matter of Burton & Watson*, 9 Ben. 324.

127. A petition was filed in involuntary bankruptcy against B. and W., as copartners. It showed that B. resided in Canada, and that W. resided in the United States. A creditor who had, before the petition was filed, obtained, by attachment in a State Court of New York, a lien on property of the firm in this district, applied to this court, before adjudication, for leave to intervene and oppose the petition, and moved to dismiss the petition, because B. did not reside within the jurisdiction of the United States when it was filed. *Held*, that the attaching creditor had such an interest that he could intervene; that the court could not adjudge B. a bankrupt; but that it could adjudge W. a bankrupt. *Ib.*

Certain Seizures cognizable in any District into which the Property is taken.

SEC. 564. Proceedings on seizures for forfeiture of any vessel or cargo entering any port of entry which has been closed by the President in pursuance of law, or of goods and chattels coming from a state or section declared by proclamation of the President to be in insurrection, into other parts of the United States, or of any vessel or vehicle conveying such property, or conveying persons to or from such state or section, or of any vessel belonging, in whole or in part, to any inhabitant of such state or section, may be prosecuted in any District Court into which the property so seized may be taken, and proceedings instituted; and the District Court thereof shall have as full jurisdiction over such proceedings as if the seizure was made in that district. [See secs. 5301, 5317.]

13 July, 1861, c. 3, secs. 4, 5, 9, v. 12, pp. 256, 257, 258.

1. (Nov., 1861.) It is competent for any person to take possession of property seizable as prize when found within the jurisdiction of the court. *The Schooner Tropic Wind and Cargo*, Blatchf. Prize Cas. 64.

2. The vessel and cargo were seized in Hampton Roads, near Fortress Monroe, by Major-General Butler of the army, and sent to New York, and there libeled as prize. *Held*, that the arrest was legal, and the suit regularly instituted. *Ib.*

May proceed in Prize Causes after Appeal.

SEC. 565. Any District Court may, notwithstanding an appeal to the Supreme Court, in any prize cause, make and execute all necessary orders for the custody and disposal of the prize property, and, in case of an appeal from a decree of condemnation, may proceed to make a decree of distribution, so far as to determine what share of the prize shall go to the captors, and what vessels are entitled to participate therein. [See sec. 4637.]

30 June, 1864, c. 174, sec. 13, v. 13, p. 310.

1. (Oct., 1813.) The District Court has no authority, after an appeal, to bail or sell the property. *The Grotius and Cargo*, 1 Gall. 503.

Trial of Issues of Fact.

SEC. 566. The trial of issues of fact in the District Courts, in all causes except cases in equity and cases of admiralty and maritime jurisdiction, and except as otherwise provided in proceeding in bankruptcy, shall be by jury. In causes of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons burden or upward, enrolled and licensed for the coasting trade, and at the time employed in the business of commerce and navigation between places in different states and territories upon the lakes and navigable waters connecting the lakes, the trial of issues of fact shall be by jury when either party requires it.

24 Sept., 1789, c. 20, sec. 9, v. 1, p. 76.

26 Feb., 1845, c. 20, v. 5, p. 726.

1. (Feb., 1808.) All seizures under laws of impost, navigation, or trade of the United States, where the seizures are made on waters navigable from the sea, by vessels of ten or more tons

burthen, are civil causes of admiralty and maritime jurisdiction, and are to be tried without a jury. *United States v. Schooner Betsey*, 4 Cranch, 443.

2. (Feb., 1812.) Cases of seizure upon waters navigable from the sea, by vessels of more than ten tons burthen, for breach of the laws of the United States, are civil cases of admiralty and maritime jurisdiction, and are to be tried without a jury. *Whelan v. United States*, 7 Cranch, 112.

3. (Feb., 1823.) In cases of seizures made *on land* under the revenue laws, the District Court proceeds as a court of common law, according to the course of the Exchequer on informations *in rem*, and the trial of the issues of fact is to be by jury; but in cases of seizures *on waters navigable from the sea by vessels of ten or more tons burthen*, it proceeds as an instance court of admiralty, by libel, and the trial is to be by the court. *The Sarah*, 8 Wheat. 391.

4. (Feb., 1824.) The trial in such a case is to be by the court, and not by a jury, in seizures on waters navigable from the sea by vessels of ten tons burthen and upwards. *The Margaret*, 9 Wheat. 421.

5. (Jan., 1833.) Action on a bond executed by William Carson, as paymaster, and signed by A. L. Duncan and John Carson as his sureties, conditioned that William Carson, paymaster for the United States, should perform the duties of that office within the district of Orleans. The breach alleged was that W. C. had received large sums of money in his official capacity, in his lifetime, which he had refused to pay into the treasury of the United States. The bond was drawn in the names of Abner L. Duncan, John Carson, and Thomas Duncan, as sureties for William Carson, but was not executed by Thomas Duncan. There were no witnesses to the bond, but it was acknowledged by all the parties to it, before a notary-public. The defendants, the heirs and representatives of A. L. Duncan, in answer to a petition to compel the payment of the bond, say that it was stipulated and understood, when the bond was executed, that one Thomas Duncan should sign it, which was never done, and the bond was never completed; and therefore A. L. Duncan was never bound by it; they also say that, as the representatives of A. L. Duncan, they are not liable for the alleged defalcation of William Carson, because he acted as pay-

master out of the limits of Louisiana; and the deficiencies, if any, occurred without the limits of the said district. Before the jury were sworn, the defendants offered a statement to the court for the purpose of obtaining a special verdict on the facts, according to the provisions of the act of the legislature of Louisiana of 1818. The court would not suffer the same to be given to the jury for a special finding, because it "was contrary to the practice of the court to compel a jury to find a special verdict." The judge charged the jury that the bond sued upon was not to be governed by the laws of Louisiana in force when the bond was signed at New Orleans, but that this and all similar bonds must be considered as having been executed at the seat of the government of the United States, and to be governed by the principles of the common law; that although the copy of the bond sued on, which was certified from the treasury department, exhibited a scrawl instead of a seal, yet they had a right to presume that the original bond had been executed according to law; and that in the absence of all proof as to the limits of the district of New Orleans, the jury was bound to presume that the defalcation occurred within the district; and if the paymaster acted beyond the limits of the district, it was incumbent on the defendants to prove the fact. *Held*, that there was no error in these decisions of the District Court of Louisiana. *Duncan v. United States*, 7 Pet. 435.

6. (Dec., 1869.) Where a seizure of property on land is made under the acts of July 13, 1861, or of Aug. 6, 1861, or July 17, 1862, passed in suppression of the rebellion, the claimants are entitled to trial by jury, though the suit be in form a libel of information. *Morris's Cotton*, 8 Wall. 507.

7. (Dec., 1869.) Where there is evidence before the jury, whether it be weak or strong, which does so much as *tend* to prove the issue on the part of either side, it is error if the court wrest it from the exercise of their judgment. It should be submitted to them under instructions from the court. *Hickman v. Jones*, 9 Wall. 197.

8. (May, 1812.) In such a case [debt for double value under the 3d section of the Embargo Act, Jan. 9, 1808, ch. 8], if the jury find a verdict for a specific sum, it is to be considered as the double value of the vessel and cargo, unless the contrary appears. *Cross v. United States*, 1 Gall. 26.

9. Where a statute gives the party double or treble damages, the jury may find the single damages, and the court will double or treble them. And a general verdict will be deemed for single damages, unless the contrary appear. But a verdict for double or treble damages will be good, if expressly so found. *Ib.*

10. (May, 1812.) The court has a right to instruct the jury as to all questions of law growing out of the facts of the case. The construction of a bill of sale is a question of law. *Nason v. United States*, 1 Gall. 53.

11. (Oct., 1812.) If the suit be in the name of "the United States of America," and the verdict find that the defendant is indebted to the United States, without saying, "of America," it is sufficient. *Sears v. United States*, 1 Gall. 257.

12. (Oct., 1812.) In debt for a penalty, brought in the name of "the United States of America," if the verdict find that the party is indebted to "the United States," without saying "of America," it is sufficient. *Smith v. United States*, 1 Gall. 260.

13. (June, 1867.) Where the evidence on a question is all one way, the court is justified in not submitting the question, as one of fact, to the jury. *United States v. One Still*, 5 Blatchf. 403.

14. (Sept., 1877.) Whether the District Court can try an action at law otherwise than by jury, suggested. *Howard v. Crompton*, 14 Blatchf. 328.

15. (April, 1811.) An information *in rem* against the thing itself, in a case of admiralty and maritime jurisdiction, is not a suit at common law, but an admiralty proceeding, and does not require a trial by a jury. *Clark v. United States*, 2 Wash. 519.

16. (May, 1868.) Proceedings for condemnation of lands under the Confiscation Acts of August, 1861, and July, 1862, may be according to forms used in admiralty; but they must conform to the course of the common law in respect to the trial of issues of fact and exceptions to evidence, and can only be reviewed after final judgment or decree, on writ of error, that writ being the process by which common-law proceedings are reviewed, appeal being the appropriate method in causes of admiralty and maritime jurisdiction. *Semple v. United States*, Chase, 259.

17. If it appeared by the record that an issue had been made, and tried by the court without a jury, and without submission by the parties, the judgment would have been reversed. *Ib.*

18. (April, 1872.) If a claimant of land, or property seized on land, contests the material facts alleged in the libel of information, the issue is to be tried by a jury. *The Confiscation Cases*, 1 Woods, 221.

19. When no answer is filed, judgment by default may be taken and the court may proceed to ascertain the material facts in the case *ex parte* and without a jury. *Ib.*

20. (1870.) Dates fixed by the records of the court may be stated to the jury as facts. [Error to District Court.] *Andrews v. Graves*, 1 Dill. 108.

21. The court will look at the entire charge to the jury, in order to ascertain whether the law was, upon the whole, fairly presented to them. *Ib.*

22. (1874.) The act of March 3, 1865, (13 Stat. 501, sec. 4) as to waiving a jury and trying issues of fact by the court, applies exclusively to the Circuit Courts. Its provisions do not extend to the District Courts. *Blair v. Allen*, 3 Dill. 101.

23. (March, 1868.) In prosecuting an information to enforce a seizure, under the act of Aug. 6, 1861, issues of fact should be submitted for trial by jury, according to the course of the common law. The act does not contemplate the determination of the facts by the judge, as in causes of admiralty jurisdiction. *United States v. The Athens Armory*, 2 Abb. U. S. 129.

24. (Feb., 1832.) Where a seizure is made on land under the laws of impost, the claimant has a right to a trial by jury. *United States v. Fourteen Packages of Pins*, Gilp. 235.

25. It is no invasion of the privilege of the jury for the court to present to them its views of the nature, bearing, tendency, and weight of the evidence. *Ib.*

26. The court is not bound to notice, in the charge, a point of law embraced in the argument, unless an opinion upon it was explicitly required. *Ib.*

27. (Feb., 1832.) The court has no right to give the jury any direction upon questions of fact, but it is the duty of the court to call the attention of the jury to particular points, and to observe upon the tendency, force, and comparative weight of conflicting testimony. *United States v. Sarchet*, Gilp. 273.

28. (Feb., 1875.) Unless given by statute, there is no right in admiralty to a trial by jury. *Gillet v. Pierce*, 1 Brown, 553.

29. The act of 1845 was passed upon the assumption that,

by the Constitution and the Judiciary Act of 1789, admiralty jurisdiction was limited to tide-waters; that cases arising upon the lakes were cognizable only in the common-law courts, and were consequently triable by jury under the Constitution; and that Congress could not transfer the jurisdiction in such cases to courts of admiralty, without "saving to the parties the right of trial by jury." Congress did not intend by this clause to grant a new right, but to save one already supposed to exist. *Ib.*

30. The assumption upon which the act was passed having been declared to have had no existence, the entire act, including the saving clause of a right to a trial by jury, became inoperative. *Ib.*

31. By the Revised Statutes, however, the law is changed, and the right to a trial by jury is expressly given in the class of cases specified in the act of 1845. *Ib.*

32. The party demanding a jury must bring himself, by his pleadings, within the provisions of the act. *Ib.*

Transfer of Records to District Courts when a Territory becomes a State.

SEC. 567. When any territory is admitted as a state, and a District Court is established therein, all the records of the proceedings in the several cases pending in the court of appeals of said territory at the time of such admission, and all records of the proceedings in the several cases in which judgments or decrees had been rendered in said territorial court before that time, and from which writs of error could have been sued out or appeals could have been taken, or from which writs of error had been sued out or appeals had been taken and prosecuted to the Supreme Court, shall be transferred to and deposited in the District Court for the said state. [See s. 704.]

22 Feb., 1847, c. 17, s. 1, v. 9, p. 128.

22 Feb., 1848, c. 12, s. 2, v. 9, p. 212.

District Judge shall demand and compel Delivery of Records of Territorial Court.

SEC. 568. It shall be the duty of the district judge, in the case provided in the preceding section, to demand of the clerk, or other person having possession or custody of the records therein mentioned, the delivery thereof, to be deposited in said District Court; and, in case of the refusal of such clerk or person to comply with such demand, the

said district judge shall compel the delivery of said records by attachment or otherwise, according to law.

22 Feb., 1847, c. 17, s. 1, v. 9, p. 128.

22 Feb., 1848, c. 12, s. 2, v. 9, p. 212.

Jurisdiction of District Courts in Cases transferred from Territorial Courts.

SEC. 569. When any territory is admitted as a state, and a District Court is established therein, the said District Court shall take cognizance of all cases which were pending and undetermined in the Superior Court of such territory, from the judgments or decrees to be rendered, in which writs of error could have been sued out or appeals taken to the Supreme Court, and shall proceed to hear and determine the same. [See s. 704.]

22 Feb., 1847, c. 17, s. 1, v. 9, p. 128.

22 Feb., 1848, c. 12, s. 2, v. 9, p. 212.

1. (Dec., 1869.) The act of Feb. 22, 1848, which enacts that the provisions of the act of Feb. 22, 1847, transferring to the District Courts of the United States, cases of federal character and jurisdiction begun in the territorial courts of certain territories of the United States, and then admitted to the union (none of which, on their admission as states, however, as it happened, were attached to any judicial circuits of the United States), shall apply to all cases which may be pending in the Supreme or other Superior Courts of *any* territory of the United States, which may be admitted as a state, at the time of its admission, is to be construed so as to transfer the cases into District Courts of the United States, if, on admission, the state did not form part of a judicial circuit, but if attached to such a circuit, then into the Circuit Court. *Express Co. v. Kountze*, 8 Wall. 342.

Commissioners to administer Oaths to Appraisers.

SEC. 570. Any district judge may appoint commissioners, before whom appraisers of vessels or goods and merchandise seized for breaches of any law of the United States, may be sworn; and such oaths, so taken, shall be as effectual as if taken before the judge in open court. [See s. 938.]

9 June, 1794, c. 64, s. 1, v. 1, p. 395.

Certain District Courts to have Circuit Court Jurisdiction.

SEC. 571. [*The District Courts for the western district of Arkansas, the northern district of Mississippi, the western district of South Carolina, and the district of West Virginia, shall have in addition to the ordinary jurisdiction of District Courts, jurisdiction of all causes, except appeals and writs of error, which are cognizable in a Circuit Court; and shall proceed therein in the same manner as a Circuit Court.*] [The District Courts for the western district of Arkansas, the eastern district of Arkansas at Helena, the northern district of Mississippi, the western district of South Carolina, and the district of West Virginia, shall have in addition to the ordinary jurisdiction of District Courts, jurisdiction of all causes, except appeals and writs of error, which are cognizable in a Circuit Court, and shall proceed therein in the same manner as a Circuit Court.]

W. Va., 4 Feb., 1819, c. 12, s. 2, v. 3, p. 479.

S. C., Feb., 1823, c. 11, v. 3, p. 726; 3 Mar., 1837, c. 34, s. 3, v. 5, p. 177; 28 Mar., 1838, c. 46, s. 1, v. 5, p. 215.

Miss., 16 Feb., 1839, c. 27, s. 1, v. 5, p. 317.

Ga., 11 Aug., 1848, c. 151, s. 8, v. 9, p. 281.

Ark., 3 Mar., 1851, c. 24, s. 3, v. 9, p. 595; 16 Aug. 1856, c. 119, ss. 1, 3, v. 11, p. 43; 11 June, 1864, c. 120, s. 1, v. 13, p. 124; 4 June, 1872, c. 284, s. 1, v. 17, p. 218; 31 Jan., 1877, c. 41, v. 19, p. 230.

1. (Jan., 1829.) A District Court of the United States, performing the appropriate duty of a District Court, is not sitting as a Circuit Court, because it possesses the powers of a Circuit Court also. *Southwick v. Postmaster General*, 2 Pet. 442.

2. (Dec., 1874.) When, by act of Congress, a District Court of the United States is invested with Circuit Court powers (see sec. 571, Rev. Stat. United States), it is not thereby constituted a Circuit Court; it possesses those powers only in the territory of the district named by the act of Congress; and neither the justice for the Circuit, nor the judge for the Circuit of which the District is a part, can sit in such District Court. *Kerrison v. Stewart*, 1 Hughes, 67.

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